



**CPS**

**CROWN PROSECUTION SERVICE**

**COUNSEL FEES MANUAL OF  
GUIDANCE**

**VERY HIGH COST CASES**

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## **INTRODUCTION**

1. The Very High Cost Case (VHCC) fee scheme has been developed by the Crown Prosecution Service, working with the Legal Services Commission and the Bar Council, to ensure that the work undertaken by counsel in the preparation and presentation of cases in the Crown Court, Higher Court and at the advice stage is actively managed by the reviewing lawyer, and expenditure in the most complex, serious and expensive cases is subject to proper audit.
2. The scheme operates by:
  - Ensuring fixed hourly and refresher rates are determined at the outset
  - Managing preparation in stages
  - Making regular stage payments
3. The document 'Terms of Appointment' at Annex A sets out the scheme in detail. This document has been prepared in consultation with representatives of the Bar Council's Remuneration Committee and can be shared with individual barristers and clerks.
4. It is for the individual barrister to decide whether to work for the CPS under the terms offered in the 'Terms of Appointment' document. If counsel is unwilling to work under the terms set out, the brief should be returned and alternative counsel instructed.
5. The Manual of Guidance provides practical advice and guidance to lawyers, caseworkers and other operational staff managing VHCCs. The manual also sets out the roles and responsibilities of the reviewing lawyer, case auditor and counsel in the management of a case.

### **Court Business Delivery Unit**

6. Court Business Delivery Unit (CBDU) is part of the Business Development Directorate and has responsibility for guidance and policy on counsel fees.
7. CBDU maintain a national record of all Very High Cost Cases and manages the prosecution costs budget, from which counsel fees are paid.

8. CBDU determine which cases will be referred to the Director of Public Prosecution's Case Management Panel.

### **Case Auditor**

9. To support reviewing lawyers and caseworkers managing cases under this new scheme, a new role of case auditor has been created. Case auditors work within Court Business Delivery Unit.
10. The case auditor will provide guidance to the reviewing lawyer and caseworker on the operation of the VHCC process. The case auditor will meet with the reviewing lawyer on a regular basis to provide further procedural advice as required. The case auditor will actively assist the reviewing lawyer in the early stages of a VHCC and the development of the Case Plan to ensure that VHCCs are properly assessed at the outset.
11. The case auditor will be primarily responsible for auditing the VHCC process and ensuring a consistent approach to the management of VHCCs across the 42 CPS Areas and 3 Casework Divisions. The case auditor will also be responsible for guidance to operational staff on the application of the VHCC process and other fee related matters including GFS and Parity queries.

## THE GENERAL PRINCIPLES

### What is a Very High Cost Case?

#### Cases in the Crown Court

12. A VHCC is:
- Any case committed, sent or transferred to the Crown Court on or after 3 July 2006 in which the trial is estimated to last more than 40 days. The estimate should be confirmed at the Plea and Case Management Hearing (PCMH). **Or**
  - Any case committed, sent or transferred to the Crown Court on or after 3 July 2006 in which three or more **trial counsel** are instructed in the preparation and presentation of the case, regardless of the estimated length of trial. **Or**
  - Any case committed, sent or transferred to the Crown Court for trial on or after 3 July 2006 in which there is:
    - a. Uncertainty about when the case will be listed for PCMH; **Or**
    - b. The PCMH is adjourned for a period well beyond that expected in a similar case; **Or**
    - c. Uncertainty regarding the number of advocates to be instructed.
- These should be referred to the Head of Fees by the Chief Crown Prosecutor, Head of Casework Division or Sector Director (CPS London). The Head of Fees or a nominated deputy will determine whether the case can be confirmed as a VHCC.**
13. Any Crown Court trial estimated at PCMH to last between 1 and 40 days should be treated as a graduated fee case (GFS).

#### Advice / Pre-committal Cases

14. Any case in which counsel is instructed on or after 3 July 2006 to provide pre-charge advice or undertake pre-committal work will fall to be paid in accordance with the VHCC scheme.
15. Where counsel is instructed to provide pre-charge advice or undertake pre-committal work and the case is subsequently committed, sent or transferred to the Crown Court, the instruction to provide advice or undertake pre-committal work in accordance with the VHCC 'Terms of Appointment' will conclude and the CPS will reassess the case against the criteria listed at paragraph 12.

16. If confirmed as a VHCC at PCMH the fee category applicable will be re-assessed to ensure that it meets the relevant criteria including the volume of prosecution documentation (excluding unused material).

### **Court of Appeal / Higher Court Cases**

17. Any Court of Appeal or Higher Court case in which counsel is instructed on or after 3 July 2006 (excluding bail applications and cases referred by the Attorney General) will fall to be paid in accordance with the VHCC scheme.

### **Magistrates' Court Trials**

18. Any Magistrates' Court trial estimated to last 4 days or more in which counsel is instructed on or after 3 July 2006 will be paid in accordance with the VHCC scheme.
19. Any Magistrates' Court trial estimated to last between 1 and 3 days in which counsel is instructed on or after 3 July 2006 will be paid in accordance with the Special Fee arrangements and **not** the VHCC scheme.

## **Applying the Scheme**

20. The reviewing lawyer, working with the caseworker, B2 / Unit Business Manager, Unit Head and case auditor is responsible for determining whether a case will fall to be paid under the VHCC scheme or GFS.
21. It is the responsibility of all staff involved in the prosecution process to apply the scheme in appropriate cases.
22. As soon as a case is identified as a VHCC it should be managed in accordance with this scheme and the case auditor should be contacted. Failure to manage the case using the scheme may result in Court Business Delivery Unit refusing to fund an Area for the cost of the case or the matter being referred to the Business Development Director as a performance issue.
23. It may be unclear until PCMH whether a Crown Court case will fall to be paid under the Very High Cost Case scheme or the Graduated Fee Scheme. However, once a case is confirmed as a Very High Cost Case it shall remain a Very High Cost Case even if the trial estimate is later reduced to 40 days or under.

24. If a case is confirmed at PCMH as a Graduated Fee Scheme case it shall remain a GFS case even if the trial lasts over 40 days at trial.
25. The only occasions when a case will move from GFS to the VHCC scheme are:
  - a. The trial estimate is varied by the court before trial from under 41 days to over 40 days; **Or**
  - b. Third trial counsel is instructed.
26. All advice / pre-committal cases and Court of Appeal / Higher Court cases (excluding high court bail applications and cases, sentences or points of law referred by the Attorney General) and Magistrates' Court trials estimated to last 4 or more days will automatically fall to be paid under the VHCC scheme.
27. If there is any doubt whether a case should be remunerated under the VHCC scheme or the Graduated Fee Scheme, a case auditor or the CPS Head of Fees should be contacted for advice.

### **Case Management Panel (CMP)**

28. Although there will only be a small number of Very High Cost Cases each year, they represent a substantial proportion of the CPS annual budget. To help Areas manage the cost of these cases, the Director of Public Prosecutions has established a Case Management Panel to review the progress and decisions made in the biggest and most expensive Very High Cost Cases.
29. Areas are responsible for notifying Court Business Delivery Unit of all cases likely to last over 40 days at trial. The referral should be made at the earliest possible stage in the case, even before counsel is instructed.
30. The form "Notification of a Heavy Fraud or other Complex Criminal Case" (Annex N) should be submitted for the attention of the Head of Fees in CBDU.
31. CBDU will determine which cases should be referred to the Director's Panel and those cases will be subject to regular review.
32. The Director's Panel will meet with the reviewing lawyer at the earliest opportunity and seek assurance that all casework issues have been

thoroughly and properly considered including proposals with regard to the selection of counsel.

33. In CPS Areas and Casework Divisions local Case Management Panels have been established to mirror the role of the Director's panel. All cases identified to CBDU under these arrangements must also be referred to the local Case Management Panel at the earliest opportunity. Local panels will generally comprise of the Chief Crown Prosecutor, Sector Director or Head of Casework Division and at least one other member being the Area Business Manager, Trial Unit Head or Head of Special Casework.
34. The panel will seek assurance that the prosecution strategy being developed for the case is appropriate and will provide the reviewing lawyer with an opportunity to seek guidance on proposed strategies and tactical considerations.
35. For further guidance on the Case Management Panel and the referral procedure please contact the Area Business Manager and case auditor.

### **Selecting Counsel**

36. The reviewing lawyer, and when necessary, the Chief Crown Prosecutor, Sector Director (CPS London), or Head of Casework Division should nominate suitable prosecution counsel.
37. Under normal circumstances, counsel from the local circuit should be instructed. Operational units should only go off circuit if suitably experienced counsel is not available locally. When deciding appropriate counsel, consideration should be given to the proximity of counsel's chambers in relation to the court at which the case will be heard and the location of the CPS and police. This will have an impact on the travel and hotel costs and the opportunities available for the reviewing lawyer and counsel to meet to discuss the case.
38. The CPS unit should contact counsel's clerk by telephone to check nominated counsel's initial availability to undertake the work necessary on a case of this nature.
39. The instructing unit must be satisfied that counsel has sufficient time available to prepare the case avoiding a return brief. Counsel should be asked to provide an undertaking that he / she has sufficient time

available to prepare the case and be available for trial / appeal hearing. If there is concern that counsel may not have sufficient time to prepare the case or be unavailable for trial / appeal hearing, different counsel should be instructed. Operational units should actively monitor the number of Very High Cost Cases being sent to individual counsel to ensure that any one counsel is not accepting an unmanageable number of Very High Cost Cases.

40. Counsel has a duty to notify the reviewing lawyer immediately if there is a possibility that he / she has insufficient time available to prepare or prosecute the case. If counsel refuses to supply an undertaking, the matter should be referred to the Chief Crown Prosecutor / Sector Director (CPS London) / Head of Casework Division and consideration given to removing the brief.
41. The rates of payment offered to counsel are non-negotiable. If suitably experienced counsel is unwilling to accept work for the rates being offered under the Very High Cost Case scheme and no other suitable counsel is available, the matter should be referred to the Chief Crown Prosecutor / Sector Director (CPS London) / Head of Division who should contact the Head of Fees for advice.

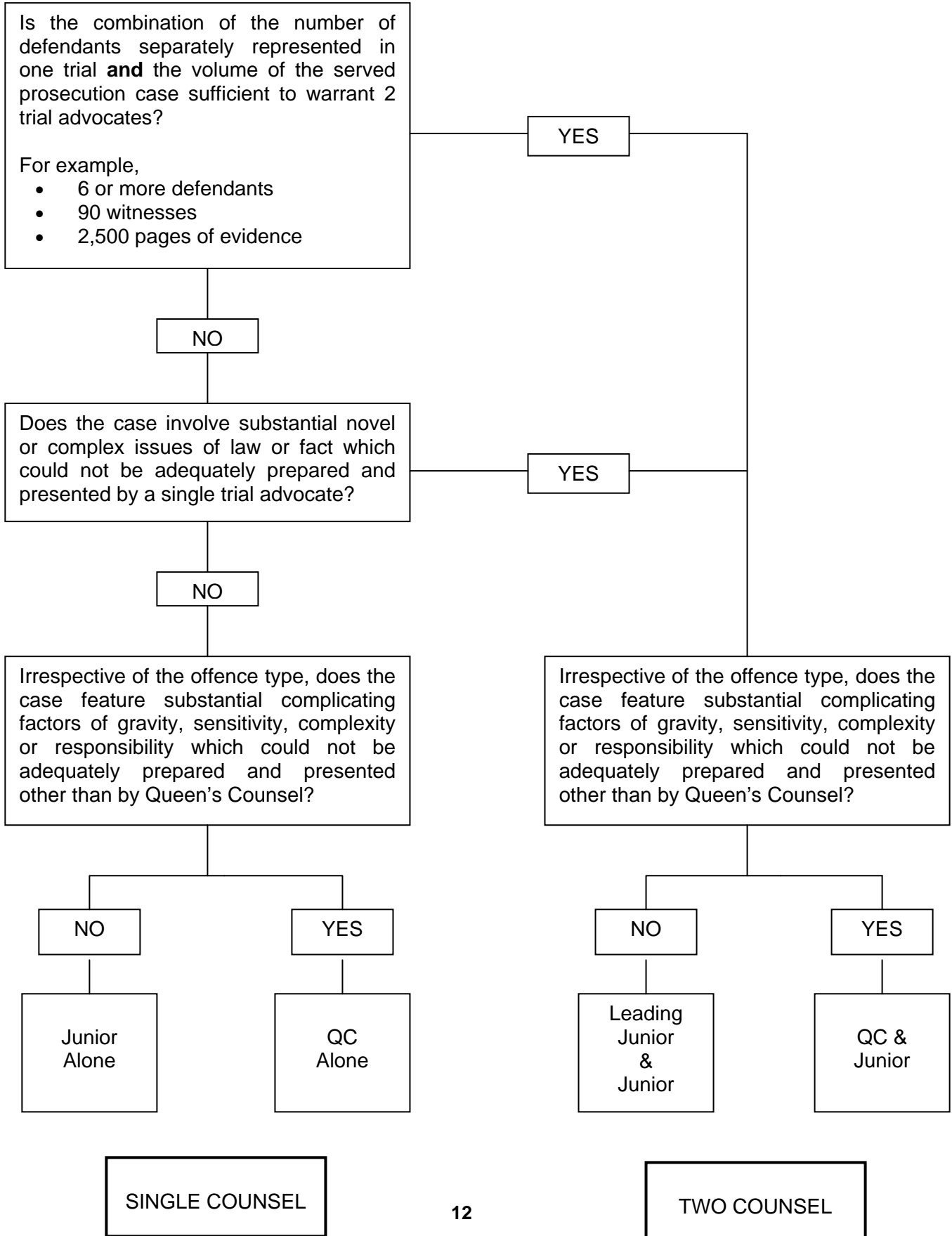
### **Determining the Appropriate Level and Number of Counsel**

42. The potential issues in the case and complexity of the evidence are factors that will determine the appropriate level of counsel. It may not always be necessary to instruct a QC or Treasury Counsel in every VHCC. There will be cases where it is more appropriate to instruct experienced counsel / grade 4 counsel (grade 4 refers to the grading system used by CPS Areas to determine suitable counsel for serious and complex cases), particularly if the case involves a specialist area of crime e.g. fraud, child abuse, sexual offences. Each operational unit should have access to a list of suitably qualified counsel. Only counsel appearing on the approved CPS list should be instructed to prosecute these cases. The list of approved advocates can be obtained from the secretary to the local Joint Advocate Selection Committee (JASC).
43. In some cases it may be appropriate to instruct a QC for a discrete part of the case. This option should be discussed with counsel already instructed in the case and a senior prosecutor.

44. The decision to instruct more than one counsel should normally be determined by the reviewing lawyer in consultation with the Trial Unit Head and / or Chief Crown Prosecutor, Sector Director (CPS London) or Head of Casework Division.
45. The decision to instruct two counsel and whether leading counsel should be a QC should be determined by reference to the decision tree below.

**INSTRUCTING TRIAL ADVOCATES – DECISION TREE**

A trial advocate is counsel actively involved in the preparation and presentation of the case to the jury. A Disclosure Junior or Noting Junior is not treated as a trial advocate.



46. Third trial counsel should only be instructed in extraordinary circumstances. Authority must be sought from the Chief Crown Prosecutor / Sector Director (CPS London) / Head of Casework Division before third counsel is instructed.
47. The Chief Crown Prosecutor / Sector Director (CPS London) / Head of Casework Division must contact the case auditor for further advice and guidance if a request is received for third trial counsel.

### **Disclosure Counsel**

48. In most cases, the in-house lawyer or junior counsel already instructed will undertake the review of disclosure material. In exceptional cases, additional counsel may be instructed solely to review and advise on disclosure.
49. Disclosure counsel instructed solely to review and advise on unused material shall be paid as a second junior counsel (VHCC rates) and if required to attend trial shall be paid at the appropriate daily rate for a second junior counsel (see Annex B).
50. The broad work plan of disclosure counsel should be managed using a Case Plan, and regularly reviewed by the reviewing lawyer at agreed intervals.
51. Disclosure counsel instructed solely to review unused material sitting in at trial will not to be categorised as third trial counsel unless they are actively involved in the preparation and presentation of the case to the jury. Therefore, in a case with two trial counsel and one disclosure counsel, trial counsel will be paid in accordance with GFS and disclosure counsel will be paid the VHCC daily rate for a second junior (provided the case is estimated to last 40 days or under at trial). The daily rate paid to disclosure counsel will be determined in accordance with the criteria at Annex B.
52. More detailed guidance on instructing and managing disclosure counsel is attached at Annex K.

### **Instructions to Counsel**

53. In all cases, clear written instructions should be sent to counsel setting out the extent of the work required e.g. advice on evidence, reviewing

unused material, preparation and presentation of a case for trial. It is important for counsel to have a full understanding of what is expected in terms of preparation, presentation of the case and strategic input into the way the case is prosecuted and the respective roles and responsibilities of each counsel instructed.

54. In addition to the written instructions sent to counsel, the back sheet should give a clear indication of whether the case is GFS or VHCC. If the reviewing lawyer considers that the trial estimate at PCMH may exceed 40 days, sample letter Annex J should be sent to counsel indicating that the fee scheme will be determined at the PCMH and that in the meantime counsel should maintain a detailed work record of all preparation undertaken prior to the PCMH.
55. Once the fee payment scheme has been determined, a separate letter should be sent to counsel's clerk confirming the fee arrangements.
56. For effective management of the case and audit purposes, a full and accurate record must be maintained of all material sent to counsel. This includes maintaining an overview of all material sent directly from the police to counsel or material viewed by counsel at another location i.e. security service material / PII material.

### **Notifying CBDU of a Very High Cost Case / Advice Case / Court of Appeal Case**

57. You should notify CBDU through your case auditor of all cases which fall to be managed using the Very High Cost Case fee scheme.
58. The following cases fall to be managed using the full Very High Cost Case fee scheme:
  - a. Crown Court cases estimated at PCMH to last over 40 days
  - b. Crown Court cases in which 3 trial counsel are instructed
  - c. Advice / pre-committal cases in which counsel is instructed and the estimated cost exceeds £5,000
  - d. Court of Appeal / Higher Court cases in which counsel is instructed and the estimated cost exceeds £5,000.

59. Additionally, the CPS Head of Fees has the discretion to confirm any case as a VHCC in the following circumstances:
- a. where there is uncertainty about when the case will be listed for PCMH;
  - b. the PCMH has been adjourned for a period well beyond that expected in a similar case
  - c. there is uncertainty regarding the number of advocates to be instructed.
60. Contact with the case auditor may be made by e-mail or telephone. Once notified the case auditor will make arrangements to meet with the reviewing lawyer and caseworker to explain the VHCC process and assist in the drafting of the Case Plan.
61. Advice / pre-committal cases and Court of Appeal / Higher Court cases estimated to cost under £5,000 should be managed using the reduced version of the VHCC fee scheme as outlined at paragraphs 195 – 200 and 291 - 296. A copy of the letter of instruction must be sent to the case auditor.
62. The estimated cost should be kept under constant review. In the event that the estimated cost becomes over £5,000, the case should be managed using the full VHCC fee scheme and the case auditor should be notified immediately.
63. Failure to notify the case auditor of a full Very High Cost Case may result in CBDU not funding the cost of the case or referring the matter to the Business Development Director as a performance issue.

### **Counsel's Work Records**

64. Counsel is expected to record details of all chargeable preparation at or about the time that the work is undertaken. The records, ideally in electronic format, should record the task undertaken and the time spent, using the 24 hour clock. An excel spreadsheet template available from CPS can be used for this purpose.

65. The work records should contain the following information:
  - a. The date on which work was done;
  - b. A description of the work done;
  - c. The time spent on each area of work;
  - d. The time when that the work was undertaken.
66. During the audit process, the reviewing lawyer and case auditor will determine whether the work records have sufficient detail to allow the payment to be made. Work records of insufficient quality will result in payment being delayed and / or the invoice being rejected.
67. Work records should be submitted to the reviewing lawyer at the end of each stage of work. On receipt, the reviewing lawyer or caseworker should notify the case auditor so arrangements can be made to audit the fees.
68. There are no circumstances when a work record simply stating 'preparation' will be acceptable for audit and payment purposes.
69. No fee can be paid until counsel has submitted work records and they have been examined to ensure the work has been actually undertaken.

## **Returns**

70. Counsel should only accept a case where their professional commitments will allow them to see the case through to conclusion. Having accepted a case, and been involved from the outset, counsel should use their best endeavours to avoid having to withdraw from the case and will only do so for reasons outside their control or because of professional embarrassment.
71. Where a return is unavoidable, counsel will be responsible for ensuring that immediate written notice is given to enable the CPS to choose and instruct another advocate. That notice will contain a full explanation of why the brief has had to be returned including details of when counsel became aware of the issue causing the return. Once notice has been served counsel should do only such work as is necessary to progress the case until the matter has been resolved.
72. When the CPS instructs counsel to attend an interlocutory hearing, including Plea and Case Management Hearing, bail applications,

applications to make or break fixtures and mentions, counsel instructed in the case will, wherever practicable, be expected to attend. If instructed counsel cannot attend, CPS will expect trial counsel to instruct a replacement advocate of appropriate skill and experience to handle the application on their behalf and within the terms and rates set out in the document 'Terms of Appointment for Counsel Instructed by the Crown Prosecution Service in a Very High Cost Case' (Annex A).

73. In Very High Cost Cases no return is acceptable save where the following applies:
- a. Counsel is unable to attend court because of illness, accident or unexpected incapacity;
  - b. Attending court would cause counsel grave personal hardship, for example, following bereavement;
  - c. The case has been fixed by the court in the knowledge that counsel instructed will not be available;
  - d. Circumstances have arisen outside counsel's control, which are such to make a return unavoidable.
74. Counsel's involvement in a part heard trial will not in itself justify a return, unless the part heard trial has been prolonged due to unforeseen circumstances. Where an advocate is instructed in a part heard trial, the position must be kept under constant review, and the CPS fully informed, so that an early decision can be made by the CPS as to whether to require a brief to be returned.
75. The CPS aim to pay only once for preparation. However, in the event of a reasonable return CPS will pay new counsel to read the case and conduct preparation not already undertaken by previous counsel. The CPS accepts there will be exceptional occasions when new counsel must revisit the work done by previous counsel. The reviewing lawyer will review this on a case by case basis in consultation with the case auditor.
76. In the event of a return the reviewing lawyer should contact the case auditor to discuss the issue.
77. If a brief return is unreasonable, the matter should be referred to the Joint Advocate Selection Committee. The JASC may take appropriate proportionate action including consideration as to whether counsel

should be removed from the approved circuit list. The case auditor will be able to provide advice and guidance on the referral procedure.

### **Travel and Hotel Expenses**

78. Counsel shall receive travel expenses if required to attend a conference, view of locus or court hearing. The journey is deemed to start from chambers unless the actual starting point is nearer. Travel expenses will be remunerated at the standard fare rate. First class travel must be agreed in advance with the reviewing lawyer. If own transport is used, payment will be made at £0.45 per mile. Travel expenses will only be paid if the journey was necessary.
79. Unlike GFS, counsel may also claim an additional hourly rate of £25 (regardless of grade) for reasonable travel and waiting time to and from a conference, view of the locus or court.
80. Counsel will be remunerated at the hourly preparation rate if required to prepare the case whilst travelling. Work done whilst travelling must be recorded in the work record. Counsel will not be entitled to claim travel and waiting time where preparation time has been claimed for the same period.
81. Authority to incur expenses for hotel or other temporary accommodation should be secured from the reviewing lawyer before incurring the expenditure. Only reasonable expenses for accommodation and meals will be paid on production of receipts. The CPS will not meet the cost of alcohol.
82. Reasonable expenses will be paid on production of receipts.

### **Legal Research**

83. Unless the case involves a novel, developing or an unusually complex point of law, justifying legal research by counsel, time spent on pure legal research will not normally be paid, as distinct from considering the application of the relevant law to the facts of the particular case as part of the preparation for trial. If extraordinary legal research is required, it should be specified as an item of work in the Stage Plan. Counsel is assumed to be up to date in substantive and procedural law: *Perry and Another v the Lord Chancellor, The Times, May 26, 1994*.

## **Secure e-mail**

84. Secure e-mail is a service available to CPS staff and external partners that enables secure electronic communication of case related information, all of which carries a restricted marking. Counsel shall be expected to use secure e-mail when available, both to receive instructions and communicate advice. Hard copies of documentary evidence – statements and exhibits, plus any served unused material will continue to be provided to counsel, unless special electronic presentation arrangements are made.
85. All counsel instructed in Very High Cost Cases will be expected to have access to secure e-mail for the purpose of transmitting case related information.
86. Information on how to register for secure e-mail can be found at <http://www.cjit.gov.uk/how-it-all-works/joining-up/secure-email/register-for-secure-email/>

## **Quality of Work / Performance**

87. If the reviewing lawyer or caseworker is concerned with the quality of work produced by counsel or if counsel unreasonably fails to act in accordance with instructions, the CPS can withhold payment.
88. If there is genuine concern that the quality of work produced by counsel falls below that expected from counsel of the same level and experience or counsel has failed to act in accordance with instructions, the reviewing lawyer or caseworker should contact the case auditor to discuss the particular issues. The matter should then be referred to the Chief Crown Prosecutor, Sector Director (CPS London) or Head of Casework Division who will determine whether payment should be withheld.
89. If payment is to be withheld the Chief Crown Prosecutor, Sector Director (CPS London) or Head of Casework Division shall notify counsel immediately in writing giving full reasons. The draft letter should be sent to the Head of Fees before being sent to counsel.
90. Counsel has the right to appeal the decision of the CPS to withhold payment to the Appeal Committee.

91. If payment is not withheld but there remains genuine concern with counsel's conduct and / or performance, the Chief Crown Prosecutor, Sector Director (CPS London) or Head of Casework Division can refer the matter to the Joint Advocate Selection Committee.
92. Alternatively, if counsel has acted in breach of the Bar Code of Conduct, the matter can be reported to the Bar Council for investigation. Any referral to the Bar Council must be made through the Chief Crown Prosecutor, Sector Director (CPS London) or Head of Casework Division who in turn must refer the matter to Court Business Delivery Unit.

### **The Workbook**

93. A workbook has been developed for the reviewing lawyer and caseworker to maintain throughout the life of the case. The workbook will contain information relevant to the fees paid to counsel.
94. A workbook should be maintained in every Very High Cost Case. Each page of the workbook will relate to a different stage of preparation.
95. The case auditor will work with the reviewing lawyer and caseworker to ensure the workbook is maintained. By the end of the case the workbook will provide a complete record of all fees paid to counsel.
96. A copy of the workbook is attached at Annex L.
97. A separate workbook will be maintained by the case auditor. The case auditor workbook contains additional sections for the audit of cases and evaluation of the Very High Cost Case scheme.

## **MANAGING CROWN COURT VERY HIGH COST CASES**

98. This section outlines the process for managing fees in cases estimated to last over 40 days at trial and to all cases with three or more counsel instructed in the preparation and presentation of the case.
99. The case auditor should be contacted as soon as a case is identified as a Very High Cost Case. The case auditor will work with the reviewing lawyer and caseworker throughout the lifetime of the case.
100. A Very High Cost Case should be managed in 4 stages:-
  - a. Completing the Case Plan
  - b. Agreeing the Case Plan
  - c. Managing the preparation in stages
  - d. Auditing and paying the fees

### **The Case Plan**

101. The first step in managing a Very High Cost Case is completion of the Case Plan. A copy of the Case Plan is at Annex E.
102. The Case Plan is a document that will provide counsel with an initial overview of the case, an estimate of the amount of work necessary to prepare the case, confirmation of the fee category and details of the work to be undertaken by counsel during the first 8-12 week stage.
103. It should normally be issued at the time that counsel is originally instructed or at a time when subsequently it becomes clear that the case will fall outside the GFS scheme. The Case Plan should be completed within 5 working days of the case being identified as a VHCC.
104. The Case Plan should be completed by the reviewing lawyer within 5 days of the case being identified as a VHCC and sent to counsel on completion. It is important for the Case Plan to be sent to counsel as soon as possible for counsel to gain an understanding of the level of fees it is intended to pay and the amount of work required.

105. The Case Plan is divided into five sections as follows:
- **Section 1** contains the basic case details including the defendant names, operation name, URN, court, counsel details etc.
  - **Section 2** contains the brief outline of facts, potential legal issues and complicating factors.
  - **Section 3** contains an agreed overview of the case.
  - **Section 4** contains the estimate of hours of preparation required from counsel and the hourly and refresher rates to be paid.
  - **Section 5** contains the Stage Plan for the first stage.
106. A copy of the Case Plan should be sent to all counsel instructed in the case. The original Case Plan should be filed together with the workbook for area staff.
107. Additional guidance on completion of the Case Plan can be obtained from a case auditor or CPS Head of Fees.

### **Assessing Preparation Time**

108. The fourth section of the Case Plan contains an estimate of total preparation time. This estimate is important because it provides counsel with an early indication of the required preparation time, which will assist counsel to manage his / her diary.
109. The initial estimate of total preparation time acts as a starting point for discussion between the reviewing lawyer and counsel over the appropriate level of preparation required for the case.
110. The initial estimate of total preparation time should be based on the case at the time the Case Plan is completed. It is accepted that the case will change; therefore, regular reviews should be conducted to reassess the overall preparation time.
111. The assessment of likely preparation time should be based on the following:
- a. A page count analysis conducted by the reviewing lawyer and caseworker
  - b. An assessment of likely preparation time conducted by the reviewing lawyer

### **Page Count Analysis**

112. A page count analysis should be undertaken of all material served on counsel. The guidelines are not set in stone, but provide a formula for establishing reasonable preparation time.
113. A time multiplier should be applied to each page of evidence and unused material. Depending on the complexity of the evidence two, three or even four minutes per page should be applied to the evidence and 1 minute per page to the unused material.
114. It should be noted that the standard multiplier of 2 minutes per page encompasses a broad range of issues, which might, in the more ordinary case, be regarded as exceptional. It would not be unusual to find more than one defendant in the case; there will often be a number of counts each involving different types of criminal conduct; expert or technical evidence is likely to be present; and complex issues of law may require research and interpretation.
115. Multiple Defendant Cases  
In cases involving 4 defendants or more, it will normally be appropriate to apply an enhanced multiplier to reflect the necessity of re-reading evidence in order to capture the relative culpability of each defendant in respect of individual offences. Whilst some cases involving less than 4 defendants may exceptionally attract the same enhancement, any proposal to apply an uplift should be carefully considered.
116. Number of Counts on the Indictment  
The mere presence of a large number of potential charges will not in itself justify uplifting the standard preparation time. Where, however, there are in excess of 4 or 5 forms of criminality alleged, each requiring unusually careful consideration of evidence to prove the charges, it may be appropriate to uplift the preparation time by the application of an enhanced multiplier.
117. Conversely, substantial numbers of offences that have been included on the indictment to represent samples of a course of conduct over a lengthy period; a series of offences; or simply for the avoidance of a rolled up conspiracy charge to encourage partial pleas to the indictment, will not normally justify an uplift.

118. Expert and Technical Evidence

Whereas a degree of expert and / or technical evidence is likely to be found in the bulk of these cases, an uplift may be appropriate if the evidence is integral to the case and largely untested and / or subject to recent criticism. An enhanced multiplier for expert and / or technical evidence should only be applied to the relevant pages of evidence and not to the case as a whole.

119. Participating Informants, Undercover Police Officers and PII

Exceptionally, in a small number of cases, there will be sensitive issues that will require discrete and competent handling by counsel. Where the evidence in the case rests on the effective handling of these issues it will be appropriate to provide an uplift in the preparation time to reflect the additional care and experience required of counsel.

120. Unused Material

In calculating preparation time for documentary unused material copied to counsel a page count should be conducted. Where the material is unusually complex, or significant, again there is discretion to apply an enhanced multiplier of 2 or even 3 minutes per page to relevant pages of unused material.

**Reviewing Lawyer's Assessment**

121. The reviewing lawyer should assess the level of preparation which counsel may require. In assessing the case the reviewing lawyer may wish consider the following issues:

- a. The length of time the case is likely to take to read
- b. Any specific tasks counsel is being requested to undertake e.g. drafting the Case Summary, scheduling
- c. Legal complexities which may require additional time to research
- d. The length of time counsel may require in re-reading the case immediately prior to any trial.

122. The reviewing lawyer should contrast their assessment with the page count analysis in order to establish a reasonable initial estimate of total preparation time. This estimate should then be endorsed in the Case Plan.

123. The Case Plan should be regularly reviewed and revised as the case develops at its different stages. If the estimate changes, either due to service of additional material or because of a significant change in the

case, the reviewing lawyer and counsel should revisit and revise the overall case estimate. The revised estimate should be recorded in the Case Plan.

### **Determining the Fee Category**

124. Recorded in section 4 of the Case Plan will be the preparation rate, refresher rate and other hearing rate to be paid to counsel. Counsel will be paid an hourly rate for all pre-trial and during trial preparation. A set refresher rate will be paid for court attendance during trial and a set other hearing rate for all other hearings which last no more than 2 hours. The appropriate rates should be determined by referring to the criteria at Annex B. Further guidance on applying the Fee Selection Criteria can be found at paragraphs 437 – 460.
125. Once counsel has been notified in writing of the fee category, he/she may apply in writing to have the hourly and refresher rate re-determined. If a request for re-determination is received the reviewing lawyer or caseworker should contact the case auditor who will provide advice. Only reasons recorded in the written request for re-determination will be considered.
126. If counsel is dissatisfied with the determination of the fee category a formal appeal can be lodged with the Appeal Committee (see paragraph 431 – 436).

### **Notifying Counsel's Clerk of the Fees**

127. A letter should be sent to counsel's clerk confirming the fee category and preparation and refresher rate. This letter should be sent within 5 days of the Case Plan being sent to counsel.
128. A sample letter is attached at Annex G.

### **Agreeing the Case Plan**

129. The Case Plan should be a record of the mutual expectation and understanding of the case and the level of work required from counsel. To achieve this understanding, 15 working days after receipt of the Case Plan, counsel and the reviewing lawyer should agree and complete sections 2, 3, 4 & 5 of the Case Plan.

130. Counsel should also use the 15 day period to consider the estimated hours of preparation and if unhappy with the suggested hours, discuss the matter with the reviewing lawyer to reach agreement.
131. If the amount of work required from counsel changes during the preparation stage, the reviewing lawyer and counsel should revisit the original agreement and amend the Case Plan accordingly.

### **Managing Preparation**

132. Preparation should be managed in 8-12 week stages. The length of the stage will vary depending on the amount of work required during the stage, the complexity of the work and the need for early review.
133. Preparation undertaken during each stage should be agreed by the reviewing lawyer and counsel in advance and recorded as areas of work in the Stage Plan. The first Stage Plan is contained in the Case Plan.
134. The Stage Plan must set out in detail the work to be completed and the number of hours required to undertake the work. If work is not recorded in the Stage Plan payment will not be made at the end of the stage.
135. At the end of each stage the work records will be audited and counsel will be paid for work done and a new Stage Plan will be completed for the next 8-12 week stage.
136. The reviewing lawyer is responsible for agreeing the areas of work and time allowed by counsel for each area of work.
137. This process will continue until the start of the trial.

### **The Stage Plan**

138. The Stage Plan should be agreed and completed by the reviewing lawyer and counsel and will set out the key case milestones and the work to be done by each member of the prosecution team i.e. counsel, reviewing lawyer, higher court advocate and caseworker. The Stage Plan should accurately set out the tasks to be undertaken during the stage.

139. The Stage Plan will include:
  - a. The time period for the stage;
  - b. The steps in proceedings the stage covers;
  - c. An overview of what will be achieved in the stage and by whom in the prosecution team;
  - d. Division of work between members of the prosecution team;
  - e. The planned hours to be undertaken by the individual on each area of work;
  - f. Where appropriate the number of pages of material involved, the number of witnesses, the number of conferences required for each area of work;
  - g. The key dates by which work will be completed.
140. It is the responsibility of the reviewing lawyer and counsel to agree each part of the Stage Plan. The Stage Plan shall be reviewed regularly and amended to reflect ongoing developments during the stage.
141. The Stage Plan can be agreed through transfer of the document between the reviewing lawyer and counsel by secure e-mail. However, the preferred option for agreeing the Stage Plan is a meeting with all counsel to discuss preparation so there is a common understanding of what should be achieved during the stage. If a conference is required to agree the Stage Plan, counsel will be entitled to claim the hourly preparation rate for the meeting.
142. At the end of the stage counsel is expected to endorse the Stage Plan with actual hours done against each area of work. This should help the reviewing lawyer plan the next stage of preparation.
143. By the end of the case there should be a series of Stage Plans providing an audit trail of all preparation.
144. A copy of each Stage Plan should be lodged with the case auditor when agreed with counsel.
145. Failure to complete the Stage Plan will result in counsel not being paid for work done during the stage.
146. A copy of the Stage Plan is at Annex H.

## **Assessing Preparation Time for Stage Plan tasks**

147. An important part of completing the Stage Plan is calculating the amount of preparation time required for each area of work. The reviewing lawyer and counsel must agree the amount of preparation time allowed for each area of work before the stage can begin. As with the Case Plan the reviewing lawyer and caseworker should undertake an assessment of necessary preparation time for each area of work.
148. The method of calculating preparation time can be shared with counsel as part of the agreement process.

## **Dividing the Work between Counsel**

149. There should only be one Stage Plan in operation at any one time. The single Stage Plan will apply to all counsel in the case. A copy of the Stage Plan will be sent to all counsel instructed. This will ensure that each counsel has a clear understanding of his/her role in the case and the role of other counsel.
150. To ensure effective use of counsel's time the reviewing lawyer and counsel should agree how the work is to be divided between counsel, the reviewing lawyer, higher court advocate and caseworker.
151. Some areas of preparation will be common to all counsel instructed e.g. the initial reading of the core bundle of served statements and exhibits upon which the prosecution will rely. Other areas of analysis and preparation should be divided amongst members of the team. Work should be allocated to counsel or other members of the trial team with the required skill and experience to undertake the work effectively and efficiently.
152. Areas of work which may be divided between internal and external members of the team include:
  - Non-sensitive unused material
  - Sensitive unused material
  - Scheduling
  - Viewing of and / or listening to video / audio / CD / DVD material
  - Advising on specific items
  - Advising on the construction of the case
  - Jury bundle and witness advice

153. It would be inappropriate for leading counsel to undertake a lengthy review of non-sensitive unused material. Junior counsel, the reviewing lawyer or other members of the trial team can be assigned this work; be tasked with identifying salient material and drawing it to the attention of the reviewing lawyer and may then inform leading counsel regarding any issues arising.
154. Sensitive unused material may be referred to leading counsel in order that consideration can be given to items which might be subject of public interest immunity.
155. Similarly, the viewing of and /or listening to video / audio / CD / DVD material should be undertaken by junior counsel. Junior counsel may then refer matters of evidential importance to his or her Leader.
156. Conversely, it would be more appropriate to instruct Leading Counsel to advise on specific issues such as matters of law, evidence presentation and case strategy.
157. Each area of work must be considered carefully before the decision is made to whom the work will be allocated.
158. It is not acceptable for counsel to divide the work amongst themselves without consideration and agreement from the reviewing lawyer.
159. If agreement cannot be reached, the reviewing lawyer should seek advice from the Trial Unit Head or other senior lawyer. Alternatively, counsel and the reviewing lawyer can refer the matter to the Appeal Committee.
160. In light of the division of work between counsel it may not be necessary to supply each counsel instructed with a full copy of the case papers. While certain documents, such as the statements and exhibits should be copied to all counsel, others should not.
161. The CPS brief should contain a list of all enclosures. The list should indicate which enclosures have been supplied and which have not. Where enclosures have not been supplied, the list should indicate which counsel has been instructed counsel consider that specific area of work.

### **Amending the Stage Plan**

162. During a stage it is likely that new issues will arise which require counsel's immediate attention. If this situation occurs the existing Stage Plan should be amended incorporating any new work.
163. The amended Stage Plan should be agreed with counsel and a copy lodged with the case auditor. It is important to amend the Stage Plan because counsel will only be paid for work recorded in the Stage Plan.
164. There are three exceptions to the rule that states that counsel cannot be paid for work done during a stage not recorded in the Stage Plan. Those exceptions are:
  - a. Necessary additional work arising from the service of further papers in the same category of documentation that has already been agreed;
  - b. Additional work, falling within the tasks agreed, within a tolerance of 10% of the total hours agreed for the stage;
  - c. It is not possible to contact the reviewing lawyer in advance, provided that genuine efforts are made.

### **The End of the Stage**

165. Ten working days before the end of the stage, the caseworker should contact counsel's clerk to remind him that the end of the stage is imminent and arrange a conference at which the next Stage Plan can be agreed. This advance notice should allow counsel sufficient time to prepare the audit documents necessary to allow the fees to be audited and paid.
166. The Stage Plan should be endorsed with the actual number of hours worked against each area of work listed in the plan.
167. Within 20 working days of the end of the stage, counsel should send the work records, a fully endorsed Stage Plan, receipts and an invoice to the reviewing lawyer. A separate note should be submitted if counsel wishes to raise additional matters before the fees are audited.
168. On receipt of the documents from chambers, the reviewing lawyer or caseworker should contact the case auditor and arrangements will be made for the fees to be audited and paid.

## **Auditing and Paying Fees**

169. The reviewing lawyer, caseworker and case auditor will work together to audit and pay the fees.
170. The reviewing lawyer, caseworker and case auditor will confirm that counsel has done the work agreed in the Stage Plan, and that the work records support the fee claimed.
171. Issues with the quality of the work records, endorsed Stage Plan or invoice will be raised with counsel before the fees are paid.
172. The reviewing lawyer should maintain a workbook of all decisions in the case that impact on the work done by counsel and the level of fees paid. The workbook should provide an audit trail of the case management decisions that affect the fees.
173. Counsel should keep their own records of agreements made with the reviewing lawyer on levels of pre-trial and during trial preparation. If a dispute arises over a claim for payment, counsel's records will be considered in support of a claim for payment.

## **During Trial Preparation**

174. Before the trial starts the reviewing lawyer and counsel should reach broad agreement on levels of during trial preparation. Agreement at the outset will not preclude continuing review and amendment to the agreement during the course of the trial. Any agreement should be recorded in writing and sent to the case auditor.
175. Levels of during trial preparation will vary from case to case and depend on a number of factors including the number of defendants in the case, ongoing legal arguments, vulnerable witnesses or additional evidence served during trial. The agreement reached with counsel should be recorded in the workbook and communicated to the case auditor.
176. Where possible, counsel should contact the reviewing lawyer in advance if the level of during trial preparation is likely to exceed the original agreement. If counsel is unable to contact the reviewing lawyer the reviewing lawyer will conduct an ex post facto assessment of work done and determine whether the work done was fair, reasonable and justified.

The case auditor will work with the reviewing lawyer to conduct the ex post facto review.

177. If agreement cannot be reached on levels of during trial preparation, the reviewing lawyer should seek advice from a more senior prosecutor. If agreement still cannot be reached between the reviewing lawyer and counsel the reviewing lawyer should refer the matter to the Appeal Committee. Before referring the matter to the Appeal Committee the reviewing lawyer should seek guidance from the case auditor.
178. Counsel should keep detailed work records of all during trial preparation. Failure to keep or submit work records will result in payment being refused or withheld.

### **Daily Advocacy / Refresher Rate**

179. The full daily advocacy / refresher rate should be determined by the reviewing lawyer when the Case Plan is completed.
180. A full or half day advocacy / refresher fee will be paid for each day of trial including the first day.
181. The full daily advocacy / refresher rate will be paid if counsel is in court for more than 3½ hours. If the court day lasts 3½ hours or less counsel shall receive a half day refresher unless the court sits before and after the luncheon adjournment. In these circumstances counsel shall be paid a full day refresher.
182. It is assumed that a full day refresher will include 5 hours in court and up to 2 hours preparation either before or after the hearing. It is assumed that the half day refresher shall include 2½ hours in court and 1 hour preparation. These times may vary depending on the case or the court.
183. Ongoing trial / hearing preparation undertaken away from the courtroom but during the course of the court sitting day will be included in the daily advocacy / refresher rate.
184. For every 20 working days during trial counsel can claim a stage payment. On receipt of the fee claim the case auditor should be contacted and the case will be audited for payment.

## **Other Hearings**

185. The Other Hearing rate will be applicable to all pre-trial and post-trial hearings which last no more than 2 hours. Should an Other Hearing last more than 2 hours, a half day or full day refresher fee will be payable according to the length of the hearing. The duration of the court hearing excludes any waiting time.

## **Ancillary Work**

186. Time spent preparing advices, case summaries, opening notes, opinions and indictments should be paid at the hourly preparation rate. This includes the administrative time taken in drafting such documents. If work of this type is required it should be allocated to the appropriate level of counsel and recorded as an area of work in the Stage Plan.
187. Counsel will also be remunerated for conferences. A conference is a meeting between counsel and the reviewing lawyer (or a CPS representative) to discuss preparation and presentation of the case. A conference that takes place without CPS representation will only be paid if the reviewing lawyer agrees the conference is necessary in advance of the meeting or such a conference is necessary and the reviewing lawyer could not be contacted.
188. Counsel will be remunerated for conferences at the hourly preparation rate specified in the Case Plan. Counsel may also claim an additional hourly rate of £25 (regardless of grade) for reasonable travel and waiting time to and from a conference, view of the locus or court.
189. Counsel will be remunerated at the hourly preparation rate for completing the Stage Plan and meeting with the reviewing lawyer to discuss the Stage Plan.

## **Submission of Invoices**

190. Within 20 working days of the end of the stage counsel should submit the work records, endorsed Stage Plan, any receipts and an invoice to the reviewing lawyer. Provided no issues requiring clarification are identified with the submitted paperwork, the CPS shall make payment within the current Service Standard of 20 working days.
191. For every 20 days worked during trial, counsel shall submit a claim for refreshers to the reviewing lawyer. Provided no issues requiring

clarification are identified with the submitted claim CPS shall make payment within the current Service Standard of 20 working days.

192. Within 20 working days of the end of the case counsel shall submit work records, an invoice and receipts to the reviewing lawyer for all unpaid work. Provided no issues are identified with the submitted paperwork CPS shall make payment within the current Service Standard of 20 working days.
193. On receipt of any claim for payment by counsel, the reviewing lawyer or caseworker should contact the case auditor, who will make arrangements to audit and pay the fees.
194. Failure to submit the work records, taxation note, receipts, endorsed Stage Plan or invoice within the specified time period or of sufficient quality will result in payment being delayed and / or refused.
195. Details of hours worked by individual counsel will be shared with the Legal Services Commission and possibly the Department for Constitutional Affairs and the Office of Criminal Justice Reform.

## **ADVICE / PRE-COMMITTAL CASES**

196. All cases in which counsel is instructed to provide independent legal advice fall to be remunerated under the Very High Cost Case fee scheme. Advice may be sought at the pre-charge, pre-committal, post committal or appeal stages.
197. Advice cases in which an accurate determination can be made of the hours of preparation required by counsel and the fees for preparation are estimated to be less than £5,000 can be managed using a reduced version of the VHCC scheme.

### **Identifying a Reduced VHCC**

198. The reviewing lawyer and caseworker should to undertake an estimate of the hours of preparation required by counsel in accordance with the guidelines set out at paragraph 218.
199. The fee category in advice cases should then be determined in accordance with the Fee Selection Criteria at Annex B.
200. The estimate of total preparation time should be multiplied by the appropriate hourly preparation rate in order to provide an overall estimate of the cost of the case.
201. If the estimated cost of the case is below £5,000 the case shall be managed in accordance with the reduced version of the VHCC fee scheme. A copy of the letter of instruction must be sent to the case auditor (see Annex C).
202. If the estimated cost of the case exceeds £5,000 the case shall be managed in accordance with the full VHCC fee scheme and the reviewing lawyer must contact the case auditor.

### **Managing Advice Cases under the Reduced VHCC scheme**

203. Once an advice case has been estimated to cost less than £5,000 the reviewing lawyer should notify counsel in writing of the fee category and estimated the number of hours of preparation using the sample letter at Annex C.
204. Counsel should keep a full and detailed work record of all preparation in accordance with the requirements set out at paragraph 64.

205. The fees should be calculated at the end of the case and counsel paid for work properly and reasonably undertaken. If counsel undertakes less hours than the CPS estimate, counsel should only be paid for work actually undertaken and not for the CPS estimate.
206. There is a duty on counsel to contact the reviewing lawyer if the estimate provided at the outset is unrealistic or the number of hours increases beyond the original estimate.
207. If the volume of material is so great that the hours of preparation cannot be fairly determined at the outset, or the value of the preparation is estimated to exceed £5,000, the full scheme should be adopted and the reviewing lawyer should contact the case auditor.
208. The level of preparation should be kept under constant review. In the event that the case increases in size and the estimate of cost rises above £5,000, the full scheme should be adopted and the reviewing lawyer should contact the case auditor.

### **Full Scheme**

209. The fees in substantial advice cases should be managed using the full VHCC process.
210. The case auditor should be contacted as soon as a case has been identified as a Very High Cost Case. The case auditor will provide advice and guidance to the reviewing lawyer and caseworker throughout the life of the case.
211. A Very High Cost Case should be managed in 4 stages:
  - a. Completing the Case Plan
  - b. Agreeing the Case Plan
  - c. Managing the preparation in stages
  - d. Auditing and paying the fees.

## The Case Plan

212. The first step in managing a Very High Cost Case is completion of the Case Plan. A copy of the Case Plan is at Annex E.
213. The Case Plan is a document that will provide counsel with an initial overview of the case, an estimate of the amount of work necessary to prepare the case, confirmation of the fee category and details of the work to be undertaken by counsel during the first 8-12 week stage.
214. The Case Plan should be completed by the reviewing lawyer within 5 working days of the case being identified as a VHCC and sent to counsel on completion. It is important for the Case Plan to be sent to counsel as soon as possible for counsel to gain an understanding of the level of fees it is intended to pay and the amount of work required.
215. The Case Plan is divided into five sections as follows:-
- **Section 1** contains the basic case details including the defendant names, operation name, URN, court, counsel details etc.
  - **Section 2** contains the brief outline of facts, potential legal issues and complicating factors.
  - **Section 3** contains an agreed overview of the case.
  - **Section 4** contains the estimate of hours of preparation required from counsel and the hourly and refresher rate to be paid.
  - **Section 5** contains the Stage Plan for the first stage.
216. A copy of the Case Plan should be sent to all counsel instructed in the case. The original Case Plan should be filed together with the Workbook for Area Staff.
217. Additional guidance on completion of the Case Plan can be obtained from a case auditor or CPS Head of Fees.

## Assessing Preparation Time

218. The fourth section of the Case Plan contains an estimate of total preparation time. This estimate is important because it provides counsel with an early indication of the required preparation time, which will assist counsel to manage his / her diary.

219. The initial estimate of total preparation time acts as a starting point for discussion between the reviewing lawyer and counsel over the appropriate level of preparation required for the case.
220. The initial estimate of total preparation time should be based on the case at the time the Case Plan is completed. It is accepted that the case will change; therefore, regular reviews should be conducted to reassess the overall preparation time.
221. The assessment of likely preparation time should be based on the following:
  - a. A page count analysis conducted by the reviewing lawyer and caseworker
  - b. An assessment of likely preparation time conducted by the reviewing lawyer

#### **Page Count Analysis**

222. A page count analysis should be undertaken of all material served on counsel. The guidelines are not set in stone, but provide a formula for establishing reasonable preparation time.
223. A time multiplier should be applied to each page of evidence and unused material. Depending on the complexity of the evidence two, three or even four minutes per page should be applied to the evidence and 1 minute per page to the unused material.
224. It should be noted that the standard multiplier of 2 minutes per page encompasses a broad range of issues, which might, in the more ordinary case, be regarded as exceptional. It would not be unusual to find more than one defendant in the case; there will often be a number of counts each involving different types of criminal conduct; expert or technical evidence is likely to be present; and complex issues of law may require research and interpretation.
225. Multiple Defendant Cases  
In cases involving 4 defendants or more, it will normally be appropriate to apply an enhanced multiplier to reflect the necessity of re-reading evidence in order to capture the relative culpability of each defendant in respect of individual offences. Whilst some cases involving less than 4 defendants may exceptionally attract the same enhancement, any proposal to apply an uplift should be carefully considered.

226. Number of Counts on the Indictment

The mere presence of a large number of potential charges will not in itself justify uplifting the standard preparation time. Where, however, there are in excess of 4 or 5 forms of criminality alleged, each requiring unusually careful consideration of evidence to prove the charges, it may be appropriate to uplift the preparation time by the application of an enhanced multiplier.

227. Conversely, substantial numbers of offences that have been included on the indictment to represent samples of a course of conduct over a lengthy period; a series of offences; or simply for the avoidance of a rolled up conspiracy charge to encourage partial pleas to the indictment, will not normally justify an uplift.

228. Expert and Technical Evidence

Whereas a degree of expert and / or technical evidence is likely to be found in the bulk of these cases, an uplift may be appropriate if the evidence is integral to the case and largely untested and / or subject to recent criticism. An enhanced multiplier for expert and / or technical evidence should only be applied to the relevant pages of evidence and not to the case as a whole.

229. Participating Informants, Undercover Police Officers and PII

Exceptionally, in a small number of cases, there will be sensitive issues that will require discrete and competent handling by counsel. Where the evidence in the case rests on the effective handling of these issues it will be appropriate to provide an uplift in the preparation time to reflect the additional care and experience required of counsel.

230. Unused Material

In calculating preparation time for documentary unused material copied to counsel a page count should be conducted. Where the material is unusually complex, or significant, again there is discretion to apply an enhanced multiplier of 2 or even 3 minutes per page to relevant pages of unused material.

**Reviewing Lawyer's Assessment**

231. The reviewing lawyer should assess the level of preparation which counsel may require. In assessing the case the reviewing lawyer may wish consider the following issues:

- a. The length of time the case took or is likely to take to read;
  - b. Any specific tasks counsel is being requested to undertake e.g. drafting the Case Summary, scheduling;
  - c. Legal complexities in relation to the advice being sought which may require additional time to research.
232. The reviewing lawyer should contrast their assessment with the page count analysis in order to establish a reasonable initial estimate of total preparation time. This estimate should then be endorsed in the Case Plan.
233. In advice cases the quantity of material initially sent to counsel for consideration may be limited. For example, counsel may be instructed at an early stage to assist the reviewing lawyer in providing strategic advice and guidance in relation to a police investigation. In these circumstances consideration should be given to the role counsel has been instructed to perform and the level of work involved.
234. The Case Plan should be regularly reviewed and revised as the case develops at its different stages. If the estimate changes, either due to submission of further material or because of a significant change in the case, the reviewing lawyer and counsel should revisit and revise the overall case estimate. The revised estimate should be recorded in the Case Plan.

### **Determining the Fee Category**

235. The Case Plan will confirm in writing the hourly and refresher rate to be paid to counsel. In advice cases the appropriate rate should be determined by referring to the criteria at Annex B.
236. In advice / pre-committal cases the number of pages of prosecution material should include **all** material sent to counsel.
237. Where counsel is instructed to provide pre-charge advice or undertake pre-committal work and the case is subsequently committed, sent or transferred to the Crown Court, the instruction to provide advice or undertake pre-committal work in accordance with the VHCC 'Terms of Appointment' will conclude and the CPS will reassess the case against the criteria listed at paragraph 12.

238. If confirmed as a VHCC at PCMH the fee category applicable will be re-assessed to ensure that it meets the relevant criteria including the volume of prosecution documentation (excluding unused material).
239. Once counsel has been notified in writing of the fee category, he/she may apply in writing to have the hourly and refresher rate re-determined. If a request for re-determination is received the reviewing lawyer or caseworker should contact the case auditor who will provide advice. Only reasons recorded in the written request for re-determination will be considered.
240. If counsel is dissatisfied with the determination of the fee category a formal appeal can be lodged with the Appeal Committee.

### **Notifying Counsel's Clerk of the Fees**

241. In addition to sending the Case Plan to counsel, a separate letter should be sent to counsel's clerk confirming the fee category. This letter should be sent within 5 days of the Case Plan being sent to counsel. The sample letter is attached at Annex F.

### **Agreeing the Case Plan**

242. The Case Plan should be a record of the mutual expectation and understanding of the case and the level of work required by counsel. To achieve this understanding, 15 working days after receipt of the Case Plan, counsel and the reviewing lawyer should agree and complete sections 2, 3 4 & 5 of the Case Plan.
243. Counsel should also use the 15 day period to consider the estimated hours of preparation and if unhappy with the suggested hours, discuss the matter with the reviewing lawyer to reach agreement.
244. If the amount of work required from counsel changes during the preparation stage, the reviewing lawyer and counsel should revisit the original agreement and amend the Case Plan accordingly.

### **Managing Preparation**

245. Preparation should be managed in 8-12 week stages. The length of the stage will vary depending on the amount of work required during the stage, the complexity of the work and the need for early review.

246. Preparation undertaken during each stage should be agreed by the reviewing lawyer and counsel in advance and recorded as areas of work in the Stage Plan. The first Stage Plan is contained in the Case Plan.
247. The Stage Plan must set out in detail the work to be completed and the number of hours required to undertake the work. If work is not recorded in the Stage Plan payment will not be made at the end of the stage.
248. At the end of each stage the work records will be audited and counsel will be paid for work done and a new Stage Plan will be completed for the next 8-12 week stage.
249. This process will continue until advice has been provided or the case has concluded.
250. The reviewing lawyer is responsible for agreeing the areas of work and time allowed by counsel for each area of work.

### **The Stage Plan**

251. The Stage Plan should be agreed and completed by the reviewing lawyer and counsel and will set out the key case milestones and the work to be done by each member of the prosecution team i.e. counsel, reviewing lawyer, higher court advocate and caseworker. The Stage Plan should accurately set out the tasks to be undertaken during the stage.
252. The Stage Plan will include:
  - a. The time period for the stage;
  - b. The steps in proceedings the stage covers;
  - c. An overview of what will be achieved in the stage and by whom in the prosecution team;
  - d. Division of work between members of the prosecution team;
  - e. The planned hours to be undertaken by the individual on each area of work;
  - f. Where appropriate the number of pages of material involved, the number of witnesses, the number of conferences required for each area of work;
  - g. The key dates by which work will be completed.

253. It is the responsibility of the reviewing lawyer and counsel to agree each part of the Stage Plan. The Stage Plan shall be reviewed regularly and amended to reflect ongoing developments during the stage.
254. The Stage Plan can be agreed through transfer of the document between the reviewing lawyer and counsel by secure e-mail. However, the preferred option for agreeing the Stage Plan is a meeting with all counsel to discuss preparation so there is a common understanding of what should be achieved during the stage. If a conference is required to agree the Stage Plan, counsel will be entitled to claim the hourly preparation rate for the meeting.
255. At the end of the stage counsel is expected to endorse the Stage Plan with actual hours done against each area of work. This should help the reviewing lawyer plan the next stage of preparation.
256. By the end of the case there should be a series of Stage Plans providing an audit trail of all preparation.
257. A copy of each Stage Plan should be lodged with the case auditor when agreed with counsel.
258. Failure to complete the Stage Plan will result in counsel not being paid for work done during the stage.
259. A copy of the Stage Plan is at Annex H.

### **Assessing Preparation Time for Stage Plan tasks**

260. An important part of completing the Stage Plan is calculating the amount of preparation time required for each area of work. The reviewing lawyer and counsel must agree the amount of preparation time allowed for each area of work before the stage can begin. As with the Case Plan the reviewing lawyer and caseworker should undertake an assessment of necessary preparation time for each area of work.
261. The method of calculating preparation time can be shared with counsel as part of the agreement process.

## **Dividing the Work between Counsel**

262. There should only be one Stage Plan in operation at any one time. The single Stage Plan will apply to all counsel in the case. A copy of the Stage Plan will be sent to all counsel instructed. This will ensure that each counsel has a clear understanding of his/her role in the case and the role of other counsel.
263. To ensure effective use of counsel's time the reviewing lawyer and counsel should agree how the work is to be divided between counsel, the reviewing lawyer, higher court advocate and caseworker.
264. Some areas of preparation will be common to all counsel instructed e.g. the initial reading of the core bundle of served statements and exhibits upon which the prosecution will rely. Other areas of analysis and preparation should be divided amongst members of the team. Work should be allocated to counsel or other member of the trial team with the required skill and experience to undertake the work effectively and efficiently.
265. Areas of work which may be divided between internal and external members of the team include:
- Non-sensitive unused material
  - Sensitive unused material
  - Scheduling
  - Viewing of and / or listening to video / audio / CD / DVD material
  - Advising on specific items
  - Advising on the construction of the case
  - Jury bundle and witness advice
266. It would be inappropriate for leading counsel to undertake a lengthy review of non-sensitive unused material. Junior counsel, the reviewing lawyer or other members of the trial team can be assigned this work; be tasked with identifying salient material and drawing it to the attention of the reviewing lawyer and may then inform leading counsel regarding any issues arising.
267. Sensitive unused material may be referred to leading counsel in order that consideration can be given to items which might be subject of public interest immunity.

268. Similarly, the viewing of and /or listening to video / audio / CD / DVD material should be undertaken by junior counsel. Junior counsel may then refer matters of evidential importance to his or her Leader.
269. Conversely, it would be more appropriate to instruct Leading Counsel to advise on specific issues such as matters of law, evidence presentation and case strategy.
270. Each area of work must be considered carefully before the decision is made to whom the work will be allocated.
271. It is not acceptable for counsel to divide the work amongst themselves without consideration and agreement from the reviewing lawyer.
272. If agreement cannot be reached, the reviewing lawyer should seek advice from the Trial Unit Head or other senior lawyer. Alternatively, counsel and the reviewing lawyer can refer the matter to the Appeal Committee.
273. In light of the division of work between counsel it may not be necessary to supply each counsel instructed with a full copy of the case papers. While certain documents, such as the statements and exhibits should be copied to all counsel, others should not.
274. The CPS brief should contain a list of all enclosures. The list should indicate which enclosures have been supplied and which have not. Where enclosures have not been supplied, the list should indicate which counsel has been instructed counsel consider that specific area of work.

### **Amending the Stage Plan**

275. During a stage it is likely that new issues will arise which require counsel's immediate attention. If this situation occurs the existing Stage Plan should be amended incorporating any new work.
276. The amended Stage Plan should be agreed with counsel and a copy lodged with the case auditor. It is important to amend the Stage Plan because counsel will only be paid for work recorded in the Stage Plan.
277. There are three exceptions to the rule that states that counsel cannot be paid for work done during a stage not recorded in the Stage Plan. Those exceptions are:

- a. Necessary additional work arising from the service of further papers in the same category of documentation that has already been agreed;
- b. Additional work, falling within the tasks agreed, within a tolerance of 10% of the total hours agreed for the stage;
- c. It is not possible to contact the reviewing lawyer in advance, provided that genuine efforts are made.

### **The End of the Stage**

278. Ten working days before the end of the stage, the caseworker should contact counsel's clerk to remind him that the end of the stage is imminent and arrange a conference at which the next Stage Plan can be agreed. This advance notice should allow counsel sufficient time to prepare the audit documents necessary to allow the fees to be audited and paid.
279. The Stage Plan should be endorsed with the actual number of hours worked against each area of work listed in the plan.
280. Within 20 working days of the end of the stage, counsel should send the work records, a fully endorsed Stage Plan, receipts and an invoice to the reviewing lawyer. A separate note should be submitted if counsel wishes to raise additional matters before the fees are audited.
281. On receipt of the documents from chambers, the reviewing lawyer or caseworker should contact the case auditor and arrangements will be made for the fees to be audited and paid.

### **Auditing and Paying Fees**

282. The reviewing lawyer, caseworker and case auditor will work together to audit and pay the fees.
283. The reviewing lawyer, caseworker and case auditor will confirm that counsel has done the work agreed in the Stage Plan, and that the work records support the fee claimed.
284. Issues with the quality of the work records, endorsed Stage Plan or invoice will be raised with counsel before the fees are paid.

285. The reviewing lawyer should maintain a workbook of all decisions in the case that impact on the work done by counsel and the level of fees paid. The workbook should provide an audit trail of the case management decisions that affect the fees.
286. Counsel should keep their own records of agreements made with the reviewing lawyer on levels of pre-trial and during trial preparation. If a dispute arises over a claim for payment, counsel's records will be considered in support of a claim for payment.

### **Ancillary Work**

287. Time spent preparing advices or opinions should be paid for at the hourly preparation rate. This includes the administrative time taken to draft advices and opinions. If work of this type is required it should be allocated to the appropriate level of counsel and recorded as an area of work in the Stage Plan.
288. Counsel will also be remunerated for conferences. A conference is a meeting between counsel and the reviewing lawyer (or a CPS representative) to discuss preparation and presentation of the case. A conference that takes place without CPS representation will only be paid if the reviewing lawyer agrees the conference is necessary in advance of the meeting or such a conference is necessary and the reviewing lawyer could not be contacted.
289. Counsel will be remunerated for conferences at the hourly preparation rate specified in the Case Plan. Counsel may also claim an additional hourly rate of £25 (regardless of grade) for reasonable travel and waiting time to and from a conference or view of the locus.
290. Counsel will be remunerated at the hourly preparation rate for completing the Stage Plan and meeting with the reviewing lawyer to discuss the Stage Plan.

### **Submission of Invoices**

291. Within 20 working days of the end of the stage counsel should submit the work records, endorsed Stage Plan and an invoice to the reviewing lawyer. Provided no issues requiring clarification are identified with the submitted paperwork CPS shall make payment within the current Service Standard of 20 working days.

292. Within 20 working days of the end of the case counsel shall submit work records, an invoice and receipts to the reviewing lawyer for all unpaid work. Provided no issues are identified with the submitted paperwork CPS shall make payment within the current Service Standard of 20 working days.
293. On receipt of any claim for payment by counsel, the reviewing lawyer or caseworker should contact the case auditor, who will make arrangements to audit and pay the fees.
294. Failure to submit the work records, receipts, endorsed Stage Plan or invoice within the specified time period or of sufficient quality will result in payment being delayed and / or refused.
295. Details of hours worked by individual counsel will be shared with the Legal Services Commission and possibly the Department for Constitutional Affairs and the Office of Criminal Justice Reform.

## **COURT OF APPEAL / HIGHER COURT CASES**

296. All Court of Appeal and Higher Court work (excluding bail applications, and advice and representation in respect of cases, sentences or points of law referred by the Attorney General) should be paid in accordance with VHCC fee scheme. Counsel will be paid a fixed hourly preparation rate, a fixed refresher rate and a fixed rate for attendance at all other hearings.
297. Higher Court bail applications and advice and representation in respect of cases, sentences or points of law referred by the Attorney General are excluded from the VHCC fee scheme.
298. Court of Appeal and Higher Court cases in which an accurate determination can be made of the hours of preparation required by counsel and the fees for preparation are estimated to be less than £5,000 can be managed using a reduced version of the VHCC Case Plan.

### **Identifying a Reduced VHCC**

299. The reviewing lawyer and caseworker should undertake an estimate of the hours of preparation required by counsel in accordance with the guidelines set out at paragraph 323.
300. The fee selection criteria do not apply in Court of Appeal and Higher Court cases. The reviewing lawyer shall determine the appropriate fee category as either 2 or 3 by considering the particular complexities, history, impact and importance of the case.
301. Fee category 1 shall apply only to Terrorism and House of Lords cases.
302. Fee category 2 shall apply only to complex Court of Appeal and Higher Court cases which have the potential to impact on future prosecutions and the general principles of law.
303. Fee category 3 shall apply to all other Court of Appeal and Higher Court VHCCs.
304. The estimate of total preparation time should be multiplied by the appropriate hourly preparation rate in order to provide an overall estimate of the cost of the case.

305. If the estimated cost of the case is below £5,000 the case shall be managed in accordance with the reduced version of the VHCC fee scheme. A copy of the letter of instruction must be sent to the case auditor.
306. If the estimated cost of the case exceeds £5,000 the case shall be managed in accordance with the full VHCC fee scheme and the reviewing lawyer must contact the case auditor.

### **Managing Court of Appeal / Higher Court Cases under the Reduced VHCC scheme**

307. Once a Court of Appeal / Higher Court case has been estimated to cost less than £5,000 the reviewing lawyer should notify counsel in writing of the fee category and estimated the number of hours of preparation using the sample letter at Annex D.
308. Counsel should keep a full and detailed work record of all preparation in accordance with the requirements set out at paragraph 64.
309. The fees should be calculated at the end of the case and counsel paid for work properly and reasonably undertaken. If counsel undertakes less hours than the CPS estimate, counsel should only be paid for work actually undertaken and not for the CPS estimate.
310. There is a duty on counsel to contact the reviewing lawyer if the estimate provided at the outset is unrealistic or the number of hours increases beyond the original estimate.
311. If the volume of material is so great that the hours of preparation cannot be fairly determined at the outset, or the value of the preparation is estimated to exceed £5,000, the full scheme should be adopted and the reviewing lawyer must contact the case auditor.
312. The level of preparation should be kept under constant review. In the event that the case increases in size and the estimate of cost rises above £5,000, the full scheme should be adopted and the reviewing lawyer must contact the case auditor.

## Full Scheme

313. The fees in substantial Court of Appeal and Higher Court cases should be managed using the full VHCC process.
314. The Case auditor should be contacted as soon as a case has been identified as a Very High Cost Case. The Case auditor will work with the reviewing lawyer and caseworker throughout the lifetime of the case.
315. A Very High Cost Case should be managed in 4 stages:
  - a. Completing the Case Plan
  - b. Agreeing the Case Plan
  - c. Managing the preparation in stages
  - d. Auditing and paying the fees.

## The Case Plan

316. The first step in managing a Very High Cost Case is completion of the Case Plan. A copy of the Case Plan is at Annex E.
317. The Case Plan is a document that will provide counsel with an initial overview of the case, an estimate of the amount of work necessary to prepare the case, confirmation of the fee category and details of the work to be undertaken by counsel during the first 8-12 week stage.
318. The Case Plan should be completed by the reviewing lawyer within 5 working days of the case being identified as a VHCC and sent to counsel on completion. It is important for the Case Plan to be sent to counsel as soon as possible for counsel to gain an understanding of the level of fees it is intended to pay and the amount of work required.
319. The Case Plan is divided into five sections as follows:
  - **Section 1** contains the basic case details including the defendant names, operation name, URN, court, counsel details etc.
  - **Section 2** contains the brief outline of facts, potential legal issues and complicating factors.
  - **Section 3** contains an agreed overview of the case.
  - **Section 4** contains the estimate of hours of preparation required from counsel and the hourly and refresher rate to be paid.
  - **Section 5** contains the Stage Plan for the first stage.

320. A copy of the Case Plan should be sent to all counsel instructed in the case. The original workbook should be filed together with the Workbook for Area Staff.
321. Additional guidance on completion of the Case Plan can be obtained from a case auditor or CPS Head of Fees.

### **Assessing Preparation Time**

322. The fourth section of the Case Plan contains an estimate of total preparation time. This estimate is important because it provides counsel with an early indication of the required preparation time, which will assist counsel to manage his / her diary.
323. The initial estimate of total preparation time acts as a starting point for discussion between the reviewing lawyer and counsel over the appropriate level of preparation required for the case.
324. The initial estimate of total preparation time should be based on the case at the time the Case Plan is completed. It is accepted that the case will change; therefore, regular reviews should be conducted to reassess the overall preparation time.
325. In many cases, counsel instructed to conduct an Appeal will be familiar with the case. For this reason he / she may request that the CPS provide a copy of the original trial brief for reference. In estimating the level of preparation required by Counsel to prepare Court of Appeal / Higher Court cases the reviewing lawyer and caseworker should only assess that material which counsel will be required to consider in preparing the prosecution's response to the appeal.
326. The assessment of likely preparation time should be based on the following:
  - a. a page count analysis conducted by the reviewing lawyer and caseworker
  - b. an assessment of likely preparation time conducted by the reviewing lawyer

### **Page Count Analysis**

327. A page count analysis should be undertaken of all material served on counsel. The guidelines are not set in stone, but provide a formula for establishing reasonable preparation time.
328. A time multiplier should be applied to each page of evidence and unused material. Depending on the complexity of the evidence two, three or even four minutes per page should be applied to the evidence and 1 minute per page to the unused material.
329. It should be noted that the standard multiplier of 2 minutes per page encompasses a broad range of issues, which might, in the more ordinary case, be regarded as exceptional. It would not be unusual to find more than one defendant in the case; there will often be a number of counts each involving different types of criminal conduct; expert or technical evidence is likely to be present; and complex issues of law may require research and interpretation.
330. Multiple Defendant Cases  
In cases involving 4 defendants or more, it will normally be appropriate to apply an enhanced multiplier to reflect the necessity of re-reading evidence in order to capture the relative culpability of each defendant in respect of individual offences. Whilst some cases involving less than 4 defendants may exceptionally attract the same enhancement, any proposal to apply an uplift should be carefully considered.
331. Number of Counts on the Indictment  
The mere presence of a large number of potential charges will not in itself justify uplifting the standard preparation time. Where, however, there are in excess of 4 or 5 forms of criminality alleged, each requiring unusually careful consideration of evidence to prove the charges, it may be appropriate to uplift the preparation time by the application of an enhanced multiplier.
332. Conversely, substantial numbers of offences that have been included on the indictment to represent samples of a course of conduct over a lengthy period; a series of offences; or simply for the avoidance of a rolled up conspiracy charge to encourage partial pleas to the indictment, will not normally justify an uplift.

333. Expert and Technical Evidence

Whereas a degree of expert and / or technical evidence is likely to be found in the bulk of these cases, an uplift may be appropriate if the evidence is integral to the case and largely untested and / or subject to recent criticism. An enhanced multiplier for expert and / or technical evidence should only be applied to the relevant pages of evidence and not to the case as a whole.

334. Participating Informants, Undercover Police Officers and PII

Exceptionally, in a small number of cases, there will be sensitive issues that will require discrete and competent handling by counsel. Where the evidence in the case rests on the effective handling of these issues it will be appropriate to provide an uplift in the preparation time to reflect the additional care and experience required of counsel.

335. Unused Material

In calculating preparation time for documentary unused material copied to counsel a page count should be conducted. Where the material is unusually complex, or significant, again there is discretion to apply an enhanced multiplier of 2 or even 3 minutes per page to relevant pages of unused material.

**Reviewing Lawyer's Assessment**

336. The reviewing lawyer should assess the level of preparation which counsel may require. In assessing the case the reviewing lawyer may wish consider the following issues:

- a. The length of time the case took or is likely to take to read
- b. Any specific tasks counsel is being requested to undertake e.g. drafting the case summary, scheduling etc.
- c. Legal complexities in relation to the advice being sought which may require additional time to research.

337. The reviewing lawyer should contrast their assessment with the page count analysis in order to establish a reasonable initial estimate of total preparation time. This estimate should then be endorsed in the Case Plan.

338. The Case Plan should be regularly reviewed and revised as the case develops at its different stages. If the estimate changes, either due to submission of further material or because of a significant change in the case, the reviewing lawyer and counsel should revisit and revise the

overall case estimate. The revised estimate should be recorded in the Case Plan.

### **Determining the Fee Category**

339. The Case Plan will confirm in writing the fee category to be paid to counsel.
340. The fee selection criteria shall **not** apply in Court of Appeal and Higher Court cases. The reviewing lawyer shall determine the appropriate fee category as either 2 or 3 by considering the particular complexities, history, impact and importance of the case.
341. Fee category 1 shall apply only to Terrorism and House of Lords cases.
342. Fee category 2 shall apply only to complex Court of Appeal and Higher Court cases which have the potential to impact on future prosecutions and the general principles of law.
343. Fee category 3 shall apply to all other Court of Appeal and Higher Court Very High Costs Cases.
344. Once counsel has been notified in writing of the fee category, he / she may apply in writing to have the hourly and refresher rate re-determined. If a request for re-determination is received the reviewing lawyer or caseworker should contact the case auditor who will provide advice. Only reasons recorded in the written request for re-determination will be considered.
345. If counsel is dissatisfied with the determination of the fee category a formal appeal can be lodged with the Appeal Committee.

### **Notifying Counsel's Clerk of the Fees**

346. In addition to sending the Case Plan to counsel, a separate letter should be sent to counsel's clerk confirming the fee category. This letter should be sent within 5 days of the Case Plan being sent to counsel. A sample letter is attached at Annex I.

## **Agreeing the Case Plan**

347. The Case Plan should be a record of the mutual expectation and understanding of the case and the level of work required by counsel. To achieve this understanding, 15 working days after receipt of the Case Plan, counsel and the reviewing lawyer should agree and complete sections 2, 3, 4 & 5 of the Case Plan.
348. Counsel should also use the 15 day period to consider the estimated hours of preparation and if unhappy with the suggested hours, discuss the matter with the reviewing lawyer to reach agreement.
349. If the amount of work required from counsel changes during the preparation stage, the reviewing lawyer and counsel should revisit the original agreement and amend the Case Plan accordingly.

## **Managing Preparation**

350. Preparation should be managed in 8-12 week stages. The length of the stage will vary depending on the amount of work required during the stage, the complexity of the work and the need for early review.
351. Preparation undertaken during each stage should be agreed by the reviewing lawyer and counsel in advance and recorded as areas of work in the Stage Plan. The first Stage Plan is contained in the Case Plan.
352. The Stage Plan must set out in detail the work to be completed and the number of hours required to undertake the work. If work is not recorded in the Stage Plan payment will not be made at the end of the stage.
353. At the end of each stage the work records will be audited and counsel will be paid for work done and a new Stage Plan will be completed for the next 8-12 week stage.
354. This process will continue until advice has been provided or the case has concluded.
355. The reviewing lawyer is responsible for agreeing the areas of work and time allowed by counsel for each area of work.

## The Stage Plan

356. The Stage Plan should be agreed and completed by the reviewing lawyer and counsel and will set out the key case milestones and the work to be done by each member of the prosecution team, i.e. counsel, reviewing lawyer, higher court advocate and caseworker. The Stage Plan should accurately set out the tasks to be undertaken during the stage.
357. The Stage Plan will include:
- a. The time period for the stage;
  - b. The steps in proceedings the stage covers;
  - c. An overview of what will be achieved in the stage and by whom in the prosecution team;
  - d. Division of work between members of the prosecution team;
  - e. The planned hours to be undertaken by the individual on each area of work;
  - f. Where appropriate the number of pages of material involved, the number of witnesses, the number of conferences required for each area of work;
  - g. The key dates by which work will be completed.
358. It is the responsibility of the reviewing lawyer and counsel to agree each part of the Stage Plan. The Stage Plan shall be reviewed regularly and amended to reflect ongoing developments during the stage.
359. The Stage Plan can be agreed through transfer of the document between the reviewing lawyer and counsel by secure e-mail. However, the preferred option for agreeing the Stage Plan is a meeting with all counsel to discuss preparation so there is a common understanding of what should be achieved during the stage. If a conference is required to agree the Stage Plan, counsel will be entitled to claim the hourly preparation rate for the meeting.
360. At the end of the stage counsel is expected to endorse the Stage Plan with actual hours done against each area of work. This should help the reviewing lawyer plan the next stage of preparation.
361. By the end of the case there should be a series of Stage Plans providing an audit trail of all preparation.

- 362. A copy of each Stage Plan should be lodged with the case auditor when agreed with counsel.
- 363. Failure to complete the Stage Plan will result in counsel not being paid for work done during the stage.
- 364. A copy of the Stage Plan is at Annex H.

### **Assessing Preparation Time for Stage Plan tasks**

- 365. An important part of completing the Stage Plan is calculating the amount of preparation time required for each area of work. The reviewing lawyer and counsel must agree the amount of preparation time allowed for each area of work before the stage can begin. As with the Case Plan the reviewing lawyer and caseworker should undertake an assessment of necessary preparation time for each area of work.
- 366. The method of calculating preparation time can be shared with counsel as part of the agreement process.

### **Dividing the Work between Counsel**

- 367. There should only be one Stage Plan in operation at any one time. The single Stage Plan will apply to all counsel in the case. A copy of the Stage Plan will be sent to all counsel instructed. This will ensure that each counsel has a clear understanding of his/her role in the case and the role of other counsel.
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- 369. Some areas of preparation will be common to all counsel instructed e.g. the initial reading of the core bundle of served statements and exhibits upon which the prosecution will rely. Other areas of analysis and preparation should be divided amongst members of the team. Work should be allocated to counsel or other member of the trial team with the required skill and experience to undertake the work effectively and efficiently.
- 370. Areas of work which may be divided between internal and external members of the team include:

- Non-sensitive unused material
  - Sensitive unused material
  - Scheduling
  - Viewing of and / or listening to video / audio / CD / DVD material
  - Advising on specific items
  - Advising on the construction of the case
  - Jury bundle and witness advice
371. It would be inappropriate for leading counsel to undertake a lengthy review of non-sensitive unused material. Junior counsel, the reviewing lawyer or other members of the trial team can be assigned this work; be tasked with identifying salient material and drawing it to the attention of the reviewing lawyer and may then inform leading counsel regarding any issues arising.
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373. Similarly, the viewing of and /or listening to video / audio / CD / DVD material should be undertaken by junior counsel. Junior counsel may then refer matters of evidential importance to his or her Leader.
374. Conversely, it would be more appropriate to instruct Leading Counsel to advise on specific issues such as matters of law, evidence presentation and case strategy.
375. Each area of work must be considered carefully before the decision is made to whom the work will be allocated.
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377. If agreement cannot be reached, the reviewing lawyer should seek advice from the Trial Unit Head or other senior lawyer. Alternatively, counsel and the reviewing lawyer can refer the matter to the Appeal Committee.
378. In light of the division of work between counsel it may not be necessary to supply each counsel instructed with a full copy of the case papers. While certain documents, such as the statements and exhibits should be copied to all counsel, others should not.

379. The CPS brief should contain a list of all enclosures. The list should indicate which enclosures have been supplied and which have not. Where enclosures have not been supplied, the list should indicate which counsel has been instructed counsel consider that specific area of work.

### **Amending the Stage Plan**

380. During a stage it is likely that new issues will arise which require counsel's immediate attention. If this situation occurs the existing Stage Plan should be amended incorporating any new work.
381. The amended Stage Plan should be agreed with counsel and a copy lodged with the case auditor. It is important to amend the Stage Plan because counsel will only be paid for work recorded in the Stage Plan.
382. There are three exceptions to the rule that states that counsel cannot be paid for work done during a stage not recorded in the Stage Plan. Those exceptions are:
- a. Necessary additional work arising from the service of further papers in the same category of documentation that has already been agreed;
  - b. Additional work, falling within the tasks agreed, within a tolerance of 10% of the total hours agreed for the stage;
  - c. It is not possible to contact the reviewing lawyer in advance, provided that genuine efforts are made.

### **The End of the Stage**

383. Ten working days before the end of the stage, the caseworker should contact counsel's clerk to remind him that the end of the stage is imminent and arrange a conference at which the next Stage Plan can be agreed. This advance notice should allow counsel sufficient time to prepare the audit documents necessary to allow the fees to be audited and paid.
384. The Stage Plan should be endorsed with the actual number of hours worked against each area of work listed in the plan.
385. Within 20 working days of the end of the stage, counsel should send the work records, a fully endorsed Stage Plan, receipts and an invoice to the

reviewing lawyer. A separate note should be submitted if counsel wishes to raise additional matters before the fees are audited.

386. On receipt of the documents from chambers, the reviewing lawyer or caseworker should contact the case auditor and arrangements will be made for the fees to be audited and paid.
387. Within 10 working days of receipt of the documents the reviewing lawyer and counsel should agree a new Stage Plan for the next 8-12 week stage.

### **Auditing and Paying Fees**

388. The reviewing lawyer, caseworker and case auditor will work together to audit and pay the fees.
389. The reviewing lawyer, caseworker and case auditor will confirm that counsel has done the work agreed in the Stage Plan, and that the work records support the fee claimed.
390. Issues with the quality of the work records, endorsed Stage Plan or invoice will be raised with counsel before the fees are paid.
391. The reviewing lawyer should maintain a workbook of all decisions in the case that impact on the work done by counsel and the level of fees paid. The workbook should provide an audit trail of the case management decisions that affect the fees.
392. Counsel should keep their own records of agreements made with the reviewing lawyer on levels of pre-trial and during trial preparation. If a dispute arises over a claim for payment, counsel's records will be considered in support of a claim for payment.

### **Continuing Preparation**

393. In Court of Appeal and Higher Court cases, counsel may be required to prepare aspects of the case before and after each court hearing. Counsel is entitled to claim for this 'continuing preparation' provided there is agreement with the reviewing lawyer on the amount of continuing preparation and counsel keeps full and detailed work records.

394. Before the main hearing starts the reviewing lawyer and counsel should reach broad agreement on levels of continuing preparation. Agreement at the outset will not preclude continuing review and amendment to the agreement during the course of the case. Any agreement should be recorded in writing and sent to the case auditor.
395. Levels of continuing preparation will vary from case to case and depend on a number of factors including the number of defendants in the case, ongoing legal arguments, vulnerable witnesses or additional material served. The agreement reached with counsel should be recorded in the workbook and communicated to the case auditor.
396. Where possible, counsel should contact the reviewing lawyer in advance if the level of continuing preparation is likely to exceed the original agreement. If counsel is unable to contact the reviewing lawyer the reviewing lawyer will conduct an ex post facto assessment of work done and determine whether the work done was fair, reasonable and justified. The case auditor will work with the reviewing lawyer to conduct the ex post facto review.
397. If agreement cannot be reached on levels of continuing preparation, the reviewing lawyer should seek advice from a more senior prosecutor. If agreement still cannot be reached between the reviewing lawyer and counsel the reviewing lawyer should refer the matter to the Appeal Committee. Before referring the matter to the Appeal Committee the reviewing lawyer should seek guidance from the case auditor.
398. Counsel should keep detailed work records of all continuing preparation. Failure to keep or submit work records will result in payment being refused or withheld.

### **Daily Advocacy / Refresher Rate**

399. The full daily refresher rate should be determined by the reviewing lawyer when the Case Plan is completed.
400. The full daily refresher rate will be paid if counsel is in court for more than 2½ hours. If the court day lasts 2½ hours or less counsel shall receive a half day refresher unless the court sits before and after the luncheon adjournment. In these circumstances counsel shall be paid a full day refresher.

401. It is assumed that a full day refresher will include 5 hours in court and up to 2 hours preparation either before or after the hearing. It is assumed that the half day refresher shall include 2½ hours in court and 1 hour preparation. These times may vary depending on the case or the court.
402. Preparation undertaken away from the courtroom but during the course of the court sitting day will be included in the daily advocacy / refresher rate.
403. For every 20 working days of the appeal / main court hearing counsel can claim a stage payment. On receipt of the fee claim the case auditor should be contacted and the case will be audited for payment.

### **Other Hearings**

404. The Other Hearing rate will be applicable to all hearings which last no more than 2 hours. Should an Other Hearing last more than 2 hours, a half day or full day refresher fee will be payable according to the length of the hearing. The duration of the court hearing excludes any waiting time.

### **Ancillary Work**

405. Time spent preparing skeleton arguments and other documents for Court of Appeal or Higher Court hearings should be paid at the hourly preparation rate. This includes the administrative time taken in drafting such documents. If work of this type is required it should be allocated to the appropriate level of counsel and recorded as an area of work in the Stage Plan.
406. Counsel will also be remunerated for conferences. A conference is a meeting between counsel and the reviewing lawyer (or a CPS representative) to discuss preparation and presentation of the case. A conference that takes place without CPS representation will only be paid if the reviewing lawyer agrees the conference is necessary in advance of the meeting or such a conference is necessary and the reviewing lawyer could not be contacted.
407. Counsel will be remunerated for conferences at the hourly preparation rate specified in the Case Plan. Counsel may also claim an additional hourly rate of £25 (regardless of grade) for reasonable travel and waiting time to and from a conference, view of the locus or court.

408. Counsel will be remunerated at the hourly preparation rate for completing the Stage Plan and meeting with the reviewing lawyer to discuss the Stage Plan.

### **Submission of Invoices**

409. Within 20 working days of the end of the stage counsel should submit the work records, endorsed Stage Plan and an invoice to the reviewing lawyer. Provided no issues requiring clarification are identified with the submitted paperwork CPS shall make payment within the current Service Standard of 20 working days.
410. Within 20 working days of the end of the case counsel shall submit work records, an invoice and receipts to the reviewing lawyer for all unpaid work. Provided no issues are identified with the submitted paperwork CPS shall make payment within the current Service Standard of 20 working days.
411. Failure to submit the work records, receipts, endorsed Stage Plan or invoice within the specified time period or of sufficient quality will result in payment being delayed and / or refused.
412. Details of hours worked by individual counsel will be shared with the Legal Services Commission and possibly the Department for Constitutional Affairs and the Office of Criminal Justice Reform.

## **WORK UNDERTAKEN BETWEEN COMMITTAL, TRANSFER OR SENDING AND THE PLEA AND CASE MANAGEMENT HEARING**

413. In most cases counsel will undertake some work before the case is confirmed as a VHCC or before third trial counsel is instructed. This work will normally relate to preparation for the Plea and Case Management Hearing but in some cases may be more substantial.
414. If, before the PCMH, there is a real possibility that a case may become a Very High Cost Case, counsel should be sent a letter notifying him / her that the case may be determined as a VHCC or GFS and, if work is undertaken, of the requirement to keep detailed work records.
415. A sample letter is at Annex J.
416. If the case is confirmed as a GFS at PCMH, counsel will be paid for work done between committal / sending and PCMH in accordance with the Graduated Fee Scheme. Work done before committal, sending and transfer should be paid separately.
417. If the case is confirmed as a VHCC at PCMH or third trial counsel is instructed, counsel will be entitled to claim payment for preparation undertaken between committal, transfer and sending and the case being confirmed as a VHCC.
418. Counsel should submit a request for payment no later than 20 working days after the PCMH. Counsel should submit the work records and an invoice. The reviewing lawyer and case auditor will review counsel's work records and if satisfied that the work was properly and reasonably undertaken, will make payment at the appropriate hourly rate.
419. If the case is confirmed as a VHCC and counsel refuses to continue in the case for the rates being offered, the brief should be returned and alternative counsel instructed. Counsel should be paid for work actually and reasonably undertaken prior to returning the brief. The matter should be referred to the JASC for information.
420. Where, following committal, sending or transfer of the case, there is uncertainty about when the case will be listed for PCMH or the PCMH is adjourned for a period well beyond the time normally expected from a case of the same type, complexity and nature, and there is a real possibility that the case may fall out of GFS because of estimated trial

length, or number of advocates instructed, the case should be treated as a potential Very High Cost Case and referred to the Chief Crown Prosecutor, Sector Director (CPS London) or Head of Casework Division and Head of Fees who will determine whether the case should be confirmed as a VHCC before the normal trigger point.

## **MAGISTRATES' TRIALS ESTIMATED TO LAST 4 OR MORE DAYS**

421. Any Magistrates' Court trial estimated to last 4 days or more in which counsel is instructed on or after 3 July 2006 will be paid in accordance with the VHCC fee scheme.
422. Any Magistrates' Court trial estimated to last between 1 and 3 days in which counsel is instructed on or after 3 July 2006 will be paid in accordance the Special Fee arrangements and **not** the VHCC fee scheme.
423. The reviewing lawyer and caseworker should undertake an estimate of the hours of preparation required by counsel in accordance with the guidelines set out at paragraph 108.
424. The fee category in Magistrates' Court trials estimated to last 4 or more days should be determined in accordance with the Fee Selection Criteria at Annex B.
425. The estimate of total preparation time should be multiplied by the appropriate hourly preparation rate in order to provide an overall estimate of cost for the case. Should the estimated cost of the case exceed £5,000 the reviewing lawyer must contact the case auditor.
426. The reviewing lawyer should notify counsel in writing of the fee category and estimated number of hours of preparation using the sample letter at Annex M.
427. Counsel should keep a full and detailed work record of all preparation in accordance with the requirements set out at paragraph 64.
428. The fees should be calculated at the end of the case and counsel paid for work properly and reasonably undertaken. If counsel undertakes less hours than the CPS estimate, counsel should be paid for work actually and reasonably undertaken and not for the CPS estimate.
429. There is a duty on counsel to contact the reviewing lawyer if the estimate provided at the outset is unrealistic or the number of hours increases beyond the original estimate.

## APPEAL COMMITTEE

430. The VHCC scheme allows counsel to appeal decisions made by the reviewing lawyer and case auditor to the Appeal Committee. Counsel can appeal on the following issues:
- a. The fee category assigned to the case;
  - b. Individual areas of work submitted in the Stage Plan;
  - c. Hours in dispute within the submitted Stage Plan;
  - d. The level of counsel allowed for any item of work;
  - e. Disbursements;
  - f. The decision of the CPS to delay payment because of quality of work records;
  - g. The decision of the CPS not to remunerate counsel for work done by counsel previously instructed;
  - h. The decision of the CPS to refuse payment for work done not specified in the Stage Plan;
  - i. The decision of the reviewing lawyer not to pay pre-committal / sending preparation;
  - j. Appropriate levels of during trial preparation;
  - k. The hours of preparation allowed for a higher court or advice case;
  - l. The decision of the reviewing lawyer not to pay for work undertaken in the preparation of a higher court or advice case.
431. The appeal should be in writing, setting out the details of the item(s) in dispute and giving reasons why counsel disagrees with the reviewing lawyer's decision. Any appeal must be lodged within 14 days of communication of the original decision.
432. If a notice of appeal is received the reviewing lawyer should contact the case auditor who will provide advice on drafting a response. The written response should be sent to counsel within 14 days of receipt of the notice of appeal by the reviewing lawyer.
433. The case auditor will be responsible for sending the notice of appeal and reviewing lawyer's response to the Appeal Committee for consideration.
434. The Appeal Committee will be drawn from experienced prosecution barristers nominated by the Bar Council, a senior representative of the CPS nominated by the DPP, and a member of the Office of the Attorney General. The Appeal Committee, which shall comprise 3 members, plus

a non-voting secretary, will consider written applications of appeal in the context of the Terms of Appointment, the reviewing lawyer's reasons, the appellant's reasons and any other relevant matters. Oral representations will only be made at the request of the Appeal Committee.

435. The committee may (a) dismiss the appeal or (b) allow the appeal in whole or in part. The committee shall give reasons for its decision. The decision of the committee will be a majority decision and be final and binding on all parties. However, the committee may invite any party to submit further information before it makes its decision. Any such information must be supplied within 14 days of notification of the request unless the committee specifies a different deadline.

## **GUIDANCE TO THE FEE SELECTION CRITERIA AND FEE CATEGORIES**

436. A fee category must be determined for each counsel instructed on a case which falls to be paid under the Very High Cost Case fee scheme.
437. The Fee Selection Criteria should be applied to determine the appropriate fee category in the following cases:
- All Advice / pre-committal cases
  - All Crown Court Very High Cost Cases
  - All Magistrates Court trials estimated to last 4 or more days
438. The Fee Selection Criteria should not be applied in Court of Appeal or Higher Court cases. (For further guidance refer to the VHCC Manual of Guidance, paragraphs 339 to 345)
439. There are separate criteria for Fraud cases and Non-Fraud cases as follows:-
- Criteria for Fraud Cases in the Crown Court and at Advice Stage
  - Criteria for Non-Fraud Cases in the Crown Court and at the Advice Stage
440. The fraud criteria should only be applied to cases in which the offence with which the defendant(s) is charged is primarily, or substantially, founded on allegations of fraud or other serious financial impropriety or involves complex financial transactions or records.
441. The criteria should be applied to the case as it stands at the time when the fee is determined and should not be based on what may happen or evidence / material that may be obtained or served during the preparation stage.
442. Some of the criteria at Annex B require a subjective test to be applied. For example, criteria calling for a determination of national interest or serious drugs case. There is currently no agreed definition of the terms:
- national interest
  - highly specialised knowledge
  - significant international dimension
  - significant issues.

443. The guidance below has not been agreed with the Bar, but should assist the determination of the proper fee category. Further advice and guidance can be obtained from a case auditor or Head of Fees.

### **National Publicity and Widespread Public Concern**

444. Most large cases will warrant reporting by the media. Therefore, in order to meet the criterion, the type of reporting has to go ‘over and above’ the normal reporting expected for a large case.
445. In fraud cases, national publicity and widespread public concern will be rare.
446. Whilst there may be national publicity in a case, it does not follow that there will be widespread public concern and vice-versa. The two elements should be considered separately and only if both elements exist is the criterion met.
447. A case meeting the criterion is likely to regularly attract media interest throughout the life of the case and not just when the defendant attends court.
448. Examples of cases involving national publicity and widespread public concern are:
- a. The Afghanistan hijackers’ case, due to continuing debate in the press, interest on asylum, and the media focus on fundamentalism and aircraft hijacking.
  - b. The Harold Shipman case due to an allegation of multiple murders by a health professional involving significant public disquiet.
  - c. The Jubilee Line extension fraud due to the allegation of public sector fraud involving vast sums.

### **Highly Specialised Knowledge**

449. Highly specialised knowledge is a criterion in Fraud Block A.
450. Knowledge in this heading must be ‘over and above’ the knowledge expected for a large fraud case. If the case is a large fraud case with an international dimension, knowledge in this area must be ‘over and above’ that expected for a large, international case.

451. The knowledge required to meet this criterion does not include knowledge of financial impropriety or fraud work. This element of difficulty will be reflected in criterion listed in Block B, namely the value of the fraud, the volume of prosecution documentation and the estimated trial length.
452. The type of specialised knowledge anticipated under this heading includes company law and non-criminal legal procedure. The requirement must be substantial.
453. Good examples would be:
- a. The need to understand company law in 3 different countries to identify whether a fraud has been committed. This goes to the legal heart of the case.
  - b. The need to understand bankruptcy law, in order to see whether the rules have been breached. Again, this would go to the legal heart of the case.
  - c. The need to understand the professional rules relating to accountants.
454. Matters that do not go to the legal heart of the case do not usually merit specialised knowledge, as anticipated in the criteria. For example, the use of letters of request to secure admissible evidence from a foreign jurisdiction.

### **Legal, Accountancy and Investigative Skills**

455. The requirement for legal, investigative and accountancy skills to be brought together is a requirement in Fraud Block A.
456. It is accepted that, by their very nature, large fraud cases may require counsel to display degrees of legal, accountancy and investigative skill. However, as with highly specialised knowledge, the requirement for counsel to bring together these skills must be 'over and above' what would normally be expected for a large fraud case.
457. In considering this criterion, the reviewing lawyer should assess the role counsel has been specifically instructed to perform whether it is to provide pre-charge / committal / send / transfer advice, to prosecute in the Crown Court or to appear in the Higher Court. For example, there is likely to be a greater need for counsel to display a combination of legal,

accountancy and investigative skills in the early stages of the police investigation.

458. The reviewing lawyer should also bear in mind the differing roles of prosecution and defence advocates. Although there may be a need for a defence advocate to demonstrate these skills in preparing his client's case, as a member of the Prosecution Team, the prosecuting advocate will be working alongside the investigating officers, which in most cases will be the police.

### **Significant International Dimension**

459. The key to this criterion is the word *significant*.
460. The evidence of a significant international dimension might include:
- a. The need for continuing liaison with lawyers abroad;
  - b. The perpetration of significant elements of the fraud abroad;
  - c. The need for involvement in international procedure and law, such as extradition procedures, letters of request, EC law.

### **Significant Issue**

461. Experience of dealing with similar cases will help determine whether there is a significant issue in the case. Most Very High Cost Cases will have significant issues. Only significant issues that are 'over and above' those in similar cases should be considered.

### **Value of Drugs**

462. In drugs cases the estimated value of drugs should be based on evidence contained within the Prosecution papers. The estimated street value of drugs should not be used for the purposes of the categorising the case.

### **Class 1 Offences**

463. For the purposes of trial in the Crown Court, Class 1 offences are classified as follows:-
- Misprision of treason and treason felony
  - Murder
  - Genocide

- Torture, hostage taking and offences under the War Crimes Act 1991
- Offences under the Official Secrets Act
- Soliciting, incitement, attempt or conspiracy to commit any of the above offences.

### **Class 2 Offences**

464. For the purposes of trial in the Crown Court, Class 2 offences are classified as follows:
- Manslaughter
  - Infanticide
  - Child destruction
  - Abortion (Offences against the Person Act 1861, s.58)
  - Rape
  - Sexual intercourse with a girl under 13
  - Incest with a girl under 13
  - Sedition
  - An offence under the Geneva Convention Act 1957, s.1
  - Mutiny
  - Piracy
  - Soliciting, incitement, attempt or conspiracy to commit any of the above offences

### **Legal Services Commission VHCC**

465. The Legal Services Commission (LSC) introduced their own arrangements for managing Very High Cost Cases in 2004. The prosecution VHCC fee scheme has been designed to achieve broad parity of fee payments and promote equality of arms in our adversarial system.
466. As with the prosecution scheme, the LSC VHCC scheme uses fee selection criteria to determine the appropriate fee category. The LSC fee selection criteria are almost identical to the CPS version. Consequently, the fee category appropriate in the vast majority of Very High Cost Cases is likely to be the same for prosecuting counsel and defence counsel.
467. However, given the differences in the criteria and that the LSC and CPS assess cases independently, there may be occasions when the fee

category determined for defence counsel and prosecuting counsel instructed on the same case differs.

468. The CPS Court Business Delivery Unit maintains close links with the Legal Services Commission; sharing information regarding the identification and categorisation of Very High Cost Cases across England and Wales. Should an issue arise regarding parity of fees in a Very High Cost Case you should contact your case auditor.