



# CPS

## Very High Cost Cases (VHCC) Terms of Appointment

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## **1. Purpose of the Document**

- 1.0.1 This document defines the services which the Crown Prosecution Service (CPS) expects of internal and external advocates in the preparation of cases and invoicing of fees which fall to be paid in accordance with the Very High Cost Case (VHCC) fee scheme.

## **2. Background**

- 2.0.1 The CPS VHCC fee scheme was introduced across England and Wales on 3 July 2006 and applies to all qualifying cases from that date.
- 2.0.2 The scheme was developed by the CPS, working with the Legal Services Commission (now the Legal Aid Agency) and the Bar Council, to ensure that the work undertaken by the advocate in the preparation and presentation of cases in the Crown Court, Higher Courts and advice stage is actively managed by the CPS reviewing lawyer, and expenditure in the most complex, serious and expensive cases is subject to proper audit.
- 2.0.3 The scheme operates by:
- Ensuring fixed preparation and advocacy rates are determined at the outset
  - Managing preparation in stages
  - Making regular stage payments
- 2.0.4 The CPS Court Business Unit (CBU) is responsible for policy and guidance in respect of prosecution costs, including advocates' fees.
- 2.0.5 When a case is identified as a potential full scheme VHCC or confirmed as a full scheme VHCC, the CPS Head of Fees will appoint a Case Auditor to work with the reviewing lawyer on the effective management of the VHCC process. The Case Auditor will provide initial guidance to the reviewing lawyer on the VHCC management process and provide further procedural advice and guidance on request.
- 2.0.6 Once a case is confirmed as a VHCC it will be managed and paid as such until the conclusion of the instruction, whether a pre-charge advice instruction, instruction to provide discrete advice, instruction to prosecute in the Crown Court or instruction to appear on the prosecutions' behalf in the High Court.

## **3. Appointment of the Advocate**

- 3.0.1 The CPS shall follow these procedures for instructing an advocate in a VHCC.
- 3.0.2 The reviewing lawyer in consultation with the Chief Crown Prosecutor / Head of Division / Deputy Chief Crown Prosecutor (CPS London) and other CPS representatives shall nominate suitable prosecution advocate(s) in accordance with current guidance on the selection of advocates. The CPS operational unit shall contact the advocate's clerk to ascertain the nominated

advocate's initial availability. If the advocate is available written instructions and relevant paperwork shall be sent.

- 3.0.3 The CPS must be satisfied that the advocate has sufficient time available to prepare the case and to avoid a return brief. The advocate (or their clerk on their behalf) will be required to provide a personal undertaking that he / she has sufficient time available to prepare the case and represent the prosecution and that he / she is willing to comply with the terms of the VHCC scheme.

#### **4. Identifying a VHCC**

##### **4.1 Cases in the Crown Court**

###### **4.1.1 A VHCC is:**

- a. any case sent or transferred to the Crown Court for trial in which the trial is estimated to last more than 40 days. The formal trial estimate shall be confirmed by the court.
- b. any case sent or transferred to the Crown Court for trial in which three or more trial advocates are instructed in the preparation and presentation of the prosecution case, regardless of the estimated length of trial.
- c. any case sent or transferred to the Crown Court for trial in which there is uncertainty about when the case will be listed for PCMH; **or** when the PCMH is adjourned for a period well beyond that expected in a similar case.

###### **4.1.2 Further to the criteria outlined at 4.1.1, the CPS Head of Fees shall have discretion to place a case under VHCC where any two of the following three criteria are met:**

- a. More than six defendants
- b. The case has more than 5,000 pages of served prosecution evidence in a single core bundle.
- c. The case has three or more indictments emanating from a single core bundle of evidence, or the indictment in a case is severed at PCMH or subsequently and three or more indictments are created, each relying on the single core bundle

###### **4.1.3 Cases meeting the criteria set out at paragraph 4.1.2 should be referred to the Head of Fees via the Case Auditor. The Head of Fees or a nominated deputy will determine whether the case can be confirmed as a VHCC.**

###### **4.1.4 In addition, in cases to which the Graduated Fee Scheme C applies, the advocate may apply in writing to the Head of Fees for any case in which there are more than 15,000 pages of served evidence to be remunerated under the VHCC arrangements.**

- 4.1.5 Referral does not mean that a case will automatically be managed under the VHCC arrangements. The decision will rest with the Head of Fees.
- 4.1.6 Should the formal trial estimate in a case previously deemed to fall under the Graduated Fee Scheme increase to beyond 40 days the case will fall to be paid in accordance with the VHCC fee scheme (as per 4.1.1 a). Where this occurs, all preparation and advocacy undertaken from the send/transfer date onwards shall fall to be paid under the VHCC scheme, subject to GFS main hearings having already taken place. The Case Auditor must be contacted in all such cases.

## **4.2 Pre Charge Advice / Discrete Advice / Pre-sending Cases**

- 4.2.1 Any case in which an advocate is instructed to provide pre-charge advice, discrete advice or undertake pre-sending work will fall to be paid in accordance with the VHCC fee scheme.
- 4.2.2 Where an advocate is instructed to provide pre-charge advice or undertake pre-sending work and the case is subsequently sent or transferred to the Crown Court, the instruction will conclude at the point that either a) the final advice is provided, b) the pre-sending work is concluded or c) the case is sent or transferred to the Crown Court.
- 4.2.3 The fee scheme applicable to the Crown Court proceedings shall be assessed in accordance with Section 4.1 above. Any Crown Court case not remunerated in accordance with the VHCC arrangements shall be remunerated in accordance with the Graduated Fee Scheme (GFS).
- 4.2.4 If confirmed as a VHCC the fee category applicable should be assessed against the relevant criteria including the volume of prosecution documentation. See section 6 and Annex A for further details.

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

- 4.3.1 Any Court of Appeal or Higher Court work in which an advocate is instructed (excluding bail applications) will fall to be paid in accordance with the VHCC fee scheme.

## **4.4 Magistrates' Court and Youth Court**

- 4.4.1 Any Magistrates' Court trial estimated to last 4 days or more in which an external advocate is instructed will be paid in accordance with the VHCC fee scheme.
- 4.4.2 There is also discretion in exceptional cases for the external advocate to seek, at the time of instruction, to be paid under the VHCC arrangements e.g. a Youth Court trial in respect of an indictable only offence.

## **4.5 Reduced Scheme (see also paragraph 22 below)**

- 4.5.1 Smaller advice / pre-sending, Court of Appeal / Higher Court and Magistrates Court cases in which the total cost of the instruction is estimated to be under £5,000 can be managed using a reduced version of the VHCC fee scheme.
- 4.5.2 The estimated cost will be calculated using the following formula:

Cost of preparation (hours x rate) + advocacy costs (days x rate) + VAT

## **5. The Case Plan**

- 5.0.1 No later than 5 working days of the case being confirmed as a full scheme VHCC, the reviewing lawyer shall complete and send the advocate the Case Plan. The Case Plan will provide an overview of the case, confirmation of the fee category, fee rates and details of the work to be undertaken during the first 8-12 week stage of the case.
- 5.0.2 No later than 15 working days after receipt of the Case Plan, the reviewing lawyer and the advocate(s) will agree the Case Plan ensuring that all sections are completed. A copy of the agreed Case Plan shall be provided to all advocates instructed and the case auditor.
- 5.0.3 In smaller advice / pre-sending, Court of Appeal / Higher Court cases and Magistrates' Court cases managed under reduced scheme the a Case Plan is not required. See also paragraph 22 below.

## **6. Determining the Fee Category**

- 6.0.1 A copy of the Fee Selection Criteria and details of the fee categories and rates can be found at Annex A.
- 6.0.2 Once the fee category has been determined, the reviewing lawyer will record the fee category, hourly preparation and advocacy rates in the Case Plan. The fee category will be determined by the reviewing lawyer within 5 working days of the case being confirmed as a VHCC and before the Case Plan is sent to the advocate.
- 6.0.3 In smaller advice / pre-sending, Court of Appeal / Higher Court cases and Magistrates' Court cases, where a Case Plan is not required, the advocate shall be notified of the rates at the point of instruction.
- 6.0.4 Cases may be sent out initially at one category and increase in size or complexity, at a later stage, warranting a move to a higher category. In those circumstances, the higher category will apply from the point at which it is accepted that the criteria are met. Accordingly, in most cases the higher category will not be applied retrospectively from the point of instruction.

### **6.1 Advice cases**

- 6.1.1 In advice cases the reviewing lawyer shall determine the fee category i.e. the hourly preparation rates, by referring to the Criteria for Fraud VHCCs or to the Criteria for Non-Fraud VHCCs at the advice stage. Assessment of the number of pages of prosecution documentation at this stage is defined as all material sent to the prosecution advocate.

### **6.2 Crown Court cases**

- 6.2.1 In VHCC prosecutions in the Crown Court the reviewing lawyer shall determine the fee category i.e. the hourly preparation and advocacy rates by referring to the Criteria for Fraud VHCCs or the Criteria for Non-Fraud

VHCCs. Assessment of the number of pages of prosecution documentation post sending or transfer is defined as all served material excluding unused material.

### **6.3 Court of Appeal / Higher Court cases**

- 6.3.1 In Court of Appeal and Higher Court cases the fee category (see Annex A) shall be determined by the reviewing lawyer on the following basis:

#### Category 1

- a. Cases referred to the Supreme Court
- b. Terrorism cases
- c. Cases remunerated at VHCC fee category 1 during the Crown Court proceedings

#### Category 2

- a. Appeal cases which are likely to impact on future prosecutions and the general principles of law
- b. Cases remunerated at VHCC fee category 2 during the Crown Court proceedings

#### Category 3

- a. All other Court of Appeal and Higher Court cases.

### **6.4 Magistrates' Court Cases**

- 6.4.1 All VHCC instructions for Magistrates' Court cases, excluding extradition proceedings, shall be remunerated at VHCC fee category 3.

### **6.5 Extradition Proceedings**

- 6.5.1 In extradition proceedings the reviewing lawyer shall determine the fee category i.e. the hourly preparation and advocacy rates by referring to the Criteria for Extradition Cases (see Annex A – part 3)

## **7. Managing Preparation**

- 7.0.1 Managing preparation will be a partnership between the reviewing lawyer and the advocate. Preparation shall be managed in stages using a Stage Plan. At the beginning of each stage of preparation the reviewing lawyer will produce a draft stage setting out the work to be done during the stage. The draft Stage Plan document should be discussed and agreed with the advocate no later than 5 working days from the stage start date.

- 7.0.2 The Stage Plan will set out the key case milestones and the work to be done by the advocate(s) instructed. The Stage Plan should accurately set out the tasks to be undertaken during the stage. A stage will normally last between 8 and 12 weeks. There should only be one stage plan in operation at any one time. The first Stage Plan is included in the Case Plan.

- 7.0.3 The Stage Plan will include:

- the time period for the stage;
- the steps in proceedings the stage covers;
- division of work between the advocates instructed;
- the planned hours to be undertaken by the individual on each area of work;
- where appropriate, the number of pages of material involved,
- the key dates by which work will be completed.

7.0.4 It is the responsibility of the reviewing lawyer and the advocate(s) to agree each part of the Stage Plan. The Stage Plan shall be reviewed regularly and amended to reflect ongoing developments during the stage. Where a stage plan is amended the reviewing lawyer must clearly endorse the version number and date in the relevant boxes and send amended copies to each advocate instructed and the Case Auditor.

7.0.5 The Stage Plan should detail the work relevant to the stage. It should reflect the work actually required at that point in the case and be realistic in terms of what will be achieved by each advocate instructed during the period covered by the Stage Plan. Unspent hours from a previous stage should not be carried forward to the next. Where the advocate has been unable to complete a task allocated during a previous stage and is required to do so, the hours relevant to the task should be re-evaluated and recorded in the next Stage Plan. For this reason, the Stage Plan should be reviewed by the advocate and reviewing lawyer no later than 5 days prior to the stage end date in anticipation of agreeing the next stage

7.0.6 An electronic Stage Plan can be exchanged between the advocate and the reviewing lawyer by secure e-mail. Alternatively, it may be more appropriate to convene a conference to agree the plan for which the advocate may claim.

7.0.7 In the event that either the reviewing lawyer or advocate encounters undue delay in the agreement of the Stage Plan, the matter must be raised with the Case Auditor who will then take the appropriate action to ensure that agreement is reached expeditiously. An unreasonable failure by the advocate to formally agree a Stage Plan will result in the advocate not being paid for work done during the stage.

7.0.8 At the end of the stage the advocate shall record the actual number of hours worked against each area of work in the Stage Plan in the column headed 'Hours done (to be completed by Counsel at the end of the stage)'.

7.0.9 The CPS expects all work to be agreed in advance of it being undertaken but accepts there may be times when an advocate will carry out work not agreed in the Stage Plan. The CPS anticipates two circumstances when the advocate can be remunerated for carrying out work not agreed in the Stage Plan. The two instances are:

- a. additional work, falling within the tasks agreed, within a tolerance of 10% of the total hours agreed for the stage; or
- b. when it is not possible to contact the reviewing lawyer in advance, provided that genuine efforts are made.

7.0.10 The process of proposing and agreeing levels of work will be a continuous one which will run for the lifetime of the instruction. By the end of the



instruction there should be a set of Stage Plans providing an audit trail of all preparation.

## **8. Legal Research**

- 8.0.1 Prosecuting advocates are assumed to be familiar with the area of law within which they practice (Perry and Another v the Lord Chancellor, The Times, May 26, 1994). Payment for time spent on legal research will only be considered where it relates to law that is novel, developing or complex. Where legal research of this nature is required, it should be specified as an item of work in the Stage Plan.

## **9. Administrative Work**

- 9.0.1 The basic principle is that, subject to any express exceptions, payment will not be made for time spent on purely administrative matters. Administrative work is any work not directly part of the legal preparation of the case.
- 9.0.2 Advocates instructed under the scheme will not be paid for preparing, checking or signing a claim for costs.

## **10. Work Records**

- 10.0.1 Advocates must record details of all chargeable preparation at or about the time that the work is undertaken. This must be logged electronically using the CPS VHCC work log template, using the 24 hour clock, available at:  
[http://www.cps.gov.uk/publications/finance/cps\\_vhcc\\_work\\_record.xls](http://www.cps.gov.uk/publications/finance/cps_vhcc_work_record.xls)

For example:

<b>Date</b>	<b>Description</b>	<b>Start</b>	<b>Finish</b>	<b>Time Elapsed</b>
11 February	Preparation of case summary	19:00	21:30	2:30

- 10.0.2 Advocates must also record the start and end times for all other chargeable work, such as conferences, court hearings / days in court and travel time at or about the time that the work is undertaken.
- 10.0.3 Failure to submit sufficiently detailed work records will delay payment or result in the invoice being rejected. Work records should be submitted to the CPS using the CPS VHCC work log template and be capable of being audited against chambers' diary or other records.
- 10.0.4 Details of hours worked by the advocate may be shared with the Legal Aid Agency (LAA) and the Ministry of Justice.

## **11. The End of the Stage**

- 11.0.1 No later than 20 working days from the end of the stage, the advocate shall send the work records, a fully endorsed Stage Plan, receipts and an invoice to the reviewing lawyer. The Stage Plan should be endorsed with the actual number of hours worked against each area of work listed in the plan.

- 11.0.2 Failure to submit the work records, receipts, endorsed Stage Plan or invoice within the specified time period or documents of sufficient quality will result in payment being delayed and / or refused.

## **12. Work done between Sending/Transfer and PCMH**

- 12.0.1 If the case is confirmed as a VHCC because either a third trial advocate is instructed or the trial is estimated to last over 40 days, all work done between committal and PCMH will be audited and paid at the confirmed hourly rate, if determined as properly and reasonably undertaken. Accordingly, the advocate is required to keep detailed work records of all work done between sending or transfer and PCMH.
- 12.0.2 If at PCMH the trial is estimated to last 40 days or under, it will be confirmed as a graduated fee and the CPS Graduated Fee Scheme shall apply, subject to paragraphs 4.1.2 and 4.1.4. Work done between sending/transfer and PCMH shall fall to be paid under GFS arrangements.
- 12.0.3 If, in a case which has yet to be confirmed as a VHCC, an advocate is required to undertake substantial preparation over and above what would normally be considered necessary in advance of the PCMH a Stage Plan may be completed to manage the work to be undertaken. Using a Stage Plan at this stage will not prevent the case being determined as GFS if the trial is estimated to last 40 days or under.

## **13. Submission of Invoices**

- 13.0.1 No later than 20 working days from the end of the stage, the advocate must submit the work records, endorsed Stage Plan, 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 of receipt of the invoice.
- 13.0.2 Every 4 weeks worked during trial, the advocate may submit a claim for days attending court and during trial preparation to the reviewing lawyer. Provided no issues requiring clarification are identified with the submitted claim, the CPS shall make payment within the current Service Standard of 20 working days of receipt of the valid invoice.
- 13.0.3 No later than 20 working days from the end of the case, the advocate shall submit work records, an invoice and receipts to the reviewing lawyer for all work for which payment has not been received. 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 of receipt of the valid invoice.
- 13.0.4 If the advocate conducts work prior to the pre-sending/transfer stage or between sending/transfer and PCMH, work records, receipts and an invoice should be submitted to the reviewing lawyer no later than 20 working days after the PCMH.
- 13.0.5 Claims for payment shall not be considered where received beyond the specified time period, unless exceptional circumstances can be cited by the advocate.

**14. Audit Full Scheme VHCCs**

- 14.0.1 At the end of each stage, the Case Auditor shall work with the reviewing lawyer to audit the fee claim(s) and ensure prompt payment. Issues with the work records, endorsed Stage Plan or invoice will be raised with the advocate or the advocate's clerk by the reviewing lawyer before the fees are paid.
- 14.0.2 The reviewing lawyer will keep a full record of all decisions made, including how the work is allocated to the advocate and how agreement is reached on the hours required for each area of work. The Case Auditor shall oversee the reviewing lawyer's application of the VHCC scheme and audit the reviewing lawyer's decision making processes. If the Case Auditor has issues of concern the matter shall be referred to the Chief Crown Prosecutor / Head of Casework Division / Deputy Chief Crown Prosecutor (CPS London) and the Head of Fees.
- 14.0.3 The advocate is obliged to keep a record of all agreements made with the reviewing lawyer on levels of pre-trial and during trial preparation. If a dispute arises over a claim for payment, the advocate's records will be considered in support of a claim for payment.
- 14.0.4 The CPS reserves the right to withhold payment if the advocate unreasonably fails to comply with instructions or the standard of work produced falls below that normally expected from an advocate of the same level and experience. If payment is to be withheld, the CPS shall notify the advocate immediately in writing giving full reasons.

**15. Full Day Advocacy**

- 15.0.1 The full day advocacy rate is based on actual sitting times and will be paid where an advocate appears at a court hearing which commences during the morning court session and concludes during the afternoon court session.
- 15.0.2 The full day advocacy rate shall remunerate the advocate for all work and advocacy undertaken during the 7 hour period between 10.00 and 17.00. This is based on the traditional refresher principle of allowing a 5 hour court day and up to 2 hours for preparation either before or after the hearing.
- 15.0.3 Payment for preparation, conference time and travel time undertaken or spent during the 7 hour period relating to the case for which the daily advocacy fee applies, is assumed within daily advocacy rate.
- 15.0.4 Under no circumstances can an individual advocate receive a daily advocacy fee for two cases on the same day. If the advocate is involved in two separate trials on the same day and there is no stand-in in either case, the leave of the reviewing lawyer in each case must be sought and the advocate must elect one case in which the daily fee will be claimed and paid. This applies equally to VHCC and GFS cases or a mixture of both.
- 15.0.5 Where, however, an advocate appears in one case in the morning and another in the afternoon, half day advocacy fees would be payable for each case.

15.0.6 Furthermore, where an advocate appears at an 'Other' hearing in an unrelated VHCC and returns to a part-heard trial later the same morning, the advocate would be entitled to claim an 'Other' hearing fee for the unrelated VHCC and either a half day or full day advocacy fee for the part-heard trial, dependent on the actual sitting times of the court that day. This principle applies where an 'Other' hearing on an unrelated case is listed in the afternoon. The same shall apply in respect of Higher Court hearings with the exception of the substantive appeal hearings, for which the half day or full day advocacy rate shall apply, as per paragraph 17.0.2.

## **16. Half Day Advocacy**

16.0.1 The half day advocacy rate is based on actual sitting times and will be paid where an advocate appears at a court hearing which lasts more than 2 hours (subject to paragraph 16.0.2) and a) commences and concludes during the morning court session, or b) commences and concludes during the afternoon court session.

16.0.2 The half day advocacy rate shall remunerate the advocate for all work and advocacy undertaken during a 3½ hour period. The 3½ hour period is deemed to run between 10.00 and 13.30 in respect of the morning court session, and 13.30 and 17.00 in respect of the afternoon court session.

16.0.3 Payment for preparation, conference time and travel time undertaken or spent during the 3½ hour period relating to the case for which the half day advocacy fee applies, is assumed within the half day advocacy rate.

16.0.4 Under no circumstances can an individual advocate receive a half day advocacy fee for two cases listed simultaneously. If the advocate is involved in two separate trials on the same day and there is no stand-in in either case, the leave of the reviewing lawyer in each case must be sought and the advocate must elect one case in which the advocacy fee will be claimed and paid. This applies equally to VHCC and GFS cases or a mixture of both.

## **17. Other Hearings**

17.0.1 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 or full day advocacy fee will be payable according to the length of the hearing. The duration of the court hearing excludes any waiting time prior to the hearing commencing.

17.0.2 The Other Hearing rate should not be applied to hearings, forming part of an effective trial, which last less than 2 hours, or to substantive appeal hearings. The half day advocacy rate shall apply in these circumstances.

## **18. Preparation during Trial**

18.0.1 No later than 7 days before the trial or other main court hearing commences, the reviewing lawyer and the advocate should reach broad agreement on the amount of preparation likely to be required during the court stage. Agreement at the outset will not preclude continuing review and amendment to the agreement during the course of the case.

18.0.2 The advocate should contact the reviewing lawyer in advance if the level of preparation during trial is likely to exceed the original agreement. If the advocate is unable to contact the reviewing lawyer, the advocate should do so as soon as possible after the event to inform the reviewing lawyer of the work undertaken and the justification for that work. The reviewing lawyer will conduct a subsequent assessment of work done and determine whether the work done was properly and reasonably undertaken. If so, all such work will be paid at the appropriate hourly rate. Where work is to be undertaken during the course of a weekend such work must be agreed in advance with the reviewing lawyer.

## **19. Disclosure Counsel**

19.0.1 Counsel instructed in any VHCC solely to review and advise on unused material shall be remunerated in accordance with the VHCC scheme at the rates applicable to a second led junior.

19.0.2 Disclosure counsel will not be categorised as a trial advocate. Therefore, in a case estimated to last 40 days or less in which two trial advocates and one disclosure counsel are instructed paragraph 4.1.1b will not apply. The trial advocates will be paid in accordance with the Graduated Fee Scheme and disclosure counsel at the VHCC rates.

## **20. Travel and Hotel Expenses**

20.0.1 The advocate may claim travel expenses if required to attend a conference, view of a scene or court hearing which is further than 25 miles (40 kilometres) from his/her chambers. The journey is deemed to start from chambers unless the actual starting point is nearer.

20.0.2 Travel should be undertaken only when absolutely necessary. Alternatives to travelling should be used wherever possible, including video conferencing, teleconferencing, telephone, email etc. All travel should be undertaken by the most cost effective and efficient means, ensuring value for money at all times and normally by public transport. This will include booking tickets in advance, purchasing fixed rather than open returns and car sharing.

20.0.3 All rail travel must be undertaken using standard class travel unless very exceptional circumstances apply, for example where a first class ticket represents better value for money than standard class. In those circumstances, first class travel may be used but only with prior authority from the reviewing lawyer. All claims for expenses relating public transport must be supported by a copy of the receipts or tickets.

20.0.4 If own transport is used, mileage will be paid at the CPS public transport rate, currently £0.25 per mile.

20.0.5 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.

## **21. Travel & Waiting Time**

- 21.0.1 Travel time will be paid for reasonable time spent travelling to and from a conference, view of a scene or where the advocate is instructed to appear in a court which is further than 25 miles (40 kilometres) from chambers.
- 21.0.2 The journey is deemed to start from chambers unless the actual starting point is nearer. Travel time may be claimed at a rate of £25 per hour. Where travel time is claimed, the advocate must record the start and end time for each single journey in the work record, together with the starting point and destination.
- 21.0.3 The advocate will be remunerated at the hourly preparation rate if required to prepare the case while travelling. Work done whilst travelling must be recorded in the work record. The advocate will not be entitled to claim travel time where preparation time has been claimed for the same time period. Nor will the advocate be entitled to claim travel time where the journey time coincides with the period covered by the full day or half day advocacy rate.
- 21.0.4 When claiming for an 'Other' hearing, the advocate may also claim a waiting time allowance of £25 per hour (regardless of grade) for reasonable time spent awaiting the commencement of a court hearing. Waiting time may not be claimed for the period of time which would otherwise be covered by the relevant advocacy rate.

## **22. Managing VHCC under the Reduced Scheme**

- 22.0.1 Smaller advice / Pre-sending, Court of Appeal / Higher Court and Magistrates Court cases in which the total cost of the instruction is estimated to be under £5,000 can be managed using a reduced version of the VHCC fee scheme.
- 22.0.2 The estimated cost will be calculated using the following formula:

$\text{Cost of preparation (hours x rate) + advocacy costs (days x rate) + VAT}$
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- 22.0.3 In advice cases the reviewing lawyer shall determine the hourly rate in accordance with the Fee Selection Criteria contained in these Terms of Appointment.
- 22.0.4 In Court of Appeal / Higher Court cases the reviewing lawyer shall determine the hourly and advocacy rates at Category 1, Category 2 or Category 3, in accordance with paragraph 6.3.1.
- 22.0.5 The reviewing lawyer shall notify the advocate in writing of the rates of remuneration and number of hours required to prepare the case. If the estimated hours of preparation appear unreasonable, the advocate should contact the reviewing lawyer to discuss the estimate within 5 days of receipt of the notification.
- 22.0.6 The advocate and the reviewing lawyer will not be expected to manage continuing preparation using the Stage Plan. Instead, the advocate shall keep a full and detailed work record of all preparation (in accordance with paragraph 9).
- 20.0.7 If the case develops in such a way as to require a higher level of input from the advocate than originally anticipated, the advocate should put the

reviewing lawyer on notice of the additional work to be undertaken and the estimated cost of the case must be reviewed. Following that review, should the estimated costs exceed £5,000 the case shall be managed in accordance with the full VHCC process and the Case Auditor should be contacted.

## **23. Returns**

23.0.1 An advocate should only accept a case where their professional commitments will allow them to see the case through to conclusion (see section 3 for further details). Having accepted a case, and been involved from the outset, the advocate is obliged to 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.

23.0.2 Where a return is unavoidable, the advocate will be responsible for ensuring that immediate notice, followed by a full explanation in writing, is given to enable the CPS to select and instruct another advocate. That written explanation will contain full details of why the brief has had to be returned, including details of when the advocate became aware of the issue causing the return. Once notice has been served, the advocate should do only such work as is necessary to progress the case until the matter has been resolved.

23.0.3 VHCCs are by their nature cases of the utmost seriousness. No return is acceptable save where the following applies:

- the advocate is unable to attend court because of illness, accident or unexpected incapacity;
- attending court would cause the advocate grave personal difficulties, for example, following bereavement;
- the case has been fixed by the court in the knowledge that the advocate instructed will not be available and after the advocate has taken all reasonable steps to avoid a listing conflict;
- a circumstance has arisen outside the advocate's control which is such as to make a return unavoidable.

23.0.4 In the event of a brief being returned, the CPS may refer the matter to the Joint Advocate Selection Committee where there is concern that the return was unreasonable.

23.0.5 The advocate's involvement in a part heard trial will not normally 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 kept fully informed, so that an early decision can be made by the CPS as to whether to require a brief to be returned.

23.0.6 The CPS aim to pay only once for the preparation of a case. However, in the case of a return there may be occasions when the new advocate will have to carry out work already undertaken by the previous advocate. The reviewing lawyer will consider whether this work should be remunerated. The CPS will, of course, pay the new advocate to read the case and conduct preparation not already undertaken by the previous advocate.

23.0.7 When the CPS instructs an advocate to attend an interlocutory hearing, including PCMH, bail applications, applications to make or break fixtures and mentions, the advocate instructed in the case will, wherever practicable, be expected to attend. If the instructed advocate cannot attend then, ideally, another advocate from within the prosecution team should attend. Where this is not possible the stand in advocate will be expected to work within the terms and rates set out in this document.

## **24. Security of Papers**

24.0.1 The CPS shall determine on a case by case basis any specific requirements covering the security of papers and disposal of confidential case-related waste by the advocate in accordance with the Attorney General's Guidelines on Information Security and Government Work.

## **25. Secure E-Mail**

25.0.1 Secure e-mail is a service available to CPS staff and external partners that enables secure electronic communication of case related information that carries an 'official' marking. It is not permitted to use secure e-mail to transmit any case related information that carries a security marking higher than 'restricted'.

25.0.2 The advocate must use secure e-mail – both to receive instructions and to communicate advice and for the electronic transfer of 'official' case related information. Where appropriate, hard copies of documentary evidence (statements and exhibits), plus any served unused material will be made available to the advocate, unless special electronic presentation arrangements are made.

25.0.4 For information on how to register for secure e-mail go to <http://cjsm.justice.gov.uk/>

## **26. Case Auditor**

26.0.1 Case auditors work within the Court Business Unit (CBU), which is the CPS HQ team responsible for policy and guidance in respect of advocates' fees.

26.0.2 The case auditor will provide guidance and support to the reviewing lawyer and all others involved in the management and payment of VHCCs. All fee payments in full scheme VHCCs must be audited by the case auditor before payment is made.

## **27. Appeal Committee**

27.0.1 The advocate may appeal to the Appeal Committee 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 advocate 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 the advocate for work done by an advocate previously instructed;
- h. the decision of the CPS to refuse payment for work undertaken that is not specified in the Stage Plan;
- i. the decision of the CPS to refuse to amend the Stage Plan;
- j. the decision of the reviewing lawyer not to pay pre-sending/transfer preparation;
- k. appropriate levels of preparation during the trial.

27.0.2 The appeal should be in writing, setting out the details of the item(s) in dispute and giving reasons why the advocate disagrees with the reviewing lawyer's decision. Any appeal must be lodged in writing within 14 days of communication of the original decision.

27.0.3 Within 14 days of receipt of the appeal, the reviewing lawyer will give his / her reasons for the decision in writing. The notice of appeal and reviewing lawyer's response will be sent to the Appeal Committee for consideration.

27.0.4 The Appeal Committee will be drawn from experienced prosecution barristers nominated by the Bar Council, a senior representative of the Crown Prosecution Service nominated by the Director of Public Prosecutions 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 these 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.

27.0.5 The Committee may dismiss the appeal or allow the appeal either in whole or in part. The Committee shall give written reasons for its decision. Its decision may be by a majority and will 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.

## **Annex A – Fee Selection Criteria**

### **Part 1: Criteria for setting hourly rates in Fraud Cases**

#### **(APPLICABLE TO ADVICE/PRE-SENDING AND CROWN COURT CASES ONLY)**

##### **Block A**

- The case is likely to give rise to widespread public concern
- The case requires highly specialised knowledge
- The case involves a significant international dimension
- The case requires legal, accountancy and investigative skills to be brought together

##### **Block B**

The value of the fraud exceeds:

- a. £10m
- b. £2m

The volume of prosecution documentation (excluding unused material in Crown Court cases) exceeds:

- a. 30,000 pages
- b. 10,000 pages

The length of the trial (or cumulative length where a single case is subsequently split into a series of trials) is estimated at:

- a. Over 16 weeks

##### **Categorisation of cases**

Category 1: 4 criteria from Block A, and 3 'a's from Block B  
Category 2: 2 criteria from Block A and at least 1 'a' or 'b' from Block B  
Category 3: All other fraud VHCCs

**Part 2: Criteria for setting hourly rates in Non-Fraud Cases**

**(APPLICABLE TO ADVICE/PRE-SENDING AND CROWN COURT CASES ONLY)**

**Category 1:**

Terrorism Cases

**Category 2:**

- Must be a class 1 or 2 offence or be a serious drug case
- and**
- The maximum sentence for the offence is imprisonment for life or over 30 years
- and**
- The case is likely to give rise to widespread public concern
- and**
- If the offence is of a violent or sexual nature, there are multiple victims or if a sole victim, there is something significant about the crime. If the case involves drugs, their total value is estimated to exceed £10m
- and**
- The volume of prosecution documentation (excluding unused material in Crown Court cases) exceeds 10,000 pages

**Category 3:**

All other VHCCs

### **Part 3: Criteria for setting hourly rates in Extradition Proceedings**

#### **Category 1:**

Supreme Court cases only

#### **Category 2:**

Any case in which two or more of the following criteria apply:

- The case involves an exceptional and significant international dimension
- The case is likely to give rise to widespread public concern
- The case involves exceptionally sensitive material relating to the effective working of one or more law enforcement or intelligence services
- The case has serious implications for the future operation of extradition arrangements or for diplomatic relations either with the requesting country or more generally, or for the general principles of extradition law

#### **Category 3:**

All other VHCCs

**Part 4: VHCC Rates of Remuneration**

<b>Advocate</b>	Hourly rates for preparation			Full day advocacy rates	Half day advocacy rate	Other hearings*
	Category 1	Category 2	Category 3			
QC / Senior Treasury Counsel	170	130	100	570	285	140
Leading Junior	135	105	90	430	215	100
Junior alone / Junior Treasury Counsel alone	105	90	80	310	155	80
Junior led by QC / STC or First led junior	100	80	70	290	145	70
Second Led Junior**	90	70	60	200	100	40
Second Led Junior / Disclosure Junior	70	55	50	150	75	40
Noter	0	0	0	125	62.50	35

\* The Other Hearing rate applies to any court hearing which lasts 2 hours or less.

This rate should not be applied to hearings forming part of an effective trial which last less than 2 hours, or to substantive appeal hearings, which last less than 2 hours. The half day advocacy rate shall apply in these circumstances.

\*\*In Very High Cost Fraud Cases, the hourly and advocacy rates paid to a second led junior can be uplifted if their specific role and responsibility in the case is over and above that expected from a second led junior in a typical fraud case.

The above rates of remuneration will be subject to annual review and if appropriate revision.

**Annex B****Guidance to the Fee Selection Criteria and Fee Categories**

1. A fee category must be determined for each advocate instructed on a case which falls to be paid under the Very High Cost Case (VHCC) fee scheme.
2. The Fee Selection Criteria should be applied to determine the appropriate fee category in the following cases:
  - All Advice / pre-sending cases
  - All Crown Court Very High Cost Cases
  - All Magistrates Court trials estimated to last 4 or more days
3. The Fee Selection Criteria should not be applied in Court of Appeal or Higher Court cases. For further guidance refer to paragraph 6.3.1 of the VHCC Terms of Appointment.
4. 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 (Annex A part 1)
  - Criteria for Non-Fraud Cases in the Crown Court and at the Advice Stage (Annex A part 2)
5. 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.
6. Where an offence of money laundering is at the centre of the case, the fraud criteria should be applied. However, where a case is not primarily, or substantially, founded on allegations of fraud or other serious financial impropriety, and where money laundering appears on the indictment but is not at the heart of the case, the non-fraud criteria should be applied.
7. The criteria should be applied to the case as it stands at the time when the fee category is determined and should not be based on what may happen or evidence / material that may be obtained or served during the preparation stage. The only exception to this will be respect of *widespread public concern* (see paragraphs 16 and 17).
8. The criteria should be kept under review as the case progresses to ensure that the fee category initially determined remains appropriate to the case. Should the fee category be re-determined part way through an instruction, the revised

rates of remuneration shall apply only to work undertaken on or after the date of the re-determination.

9. The category appropriate to a case will be reviewed at each instruction. It follows therefore that if a case is assessed at one category in the pre-sending advice stage and the case becomes a VHCC in the Crown Court, the category will be reassessed and the appropriate category for the Crown Court stage will be applied.

## **FRAUD CASES**

### **Widespread Public Concern**

10. Cases which generate *widespread public concern* shall feature at their core matters of significant interest and importance which are likely to cause all or most members of the general public anxiety and unease.
11. This criterion is designed to reflect the additional burden placed upon advocates prosecuting cases of high importance, which attract far greater public scrutiny, and therefore present an enhanced reputational risk as a consequence.
12. Examples of the type of fraud case which may generate *widespread public concern* may include the following:
  - b. Large scale tax evasion, which amounts to an attack on the UK tax system and, therefore, the UK tax payer.
  - c. Public sector fraud involving vast sums of money
  - d. Frauds which target or involve national financial institutions
  - e. Cases involving the bribery and corruption of high ranking public officials
  - f. Cases which are linked to the funding of terrorist organisations
  - g. Cases which relate to arms deals, such as strategic export cases.
13. Cases which generate concern from a specific interest group or groups do not meet the criterion.
14. In many instances the level of media interest in a particular case may be seen as an indication of the public concern it has generated. Cases which generate *widespread public concern* are likely to be the focus of extensive interest, and trigger editorial debate, across the broadcast, print and electronic media.
15. In considering this aspect, it should be noted that most large cases will warrant reporting to some degree and media interest can often be generated based on incidental factors, such as the public profile of the defendant, rather than the issues central to the case. The reporting of a fraud case in which the

defendant is a well-known public figure is not of itself sufficient to meet this criterion.

16. Whilst media interest may be indicative of *widespread public concern* it is recognised that restrictions on the reporting of cases of potentially high public importance may result in little or no publicity. In these instances, the reviewing lawyer should take into account the type of publicity generated were those restrictions to be lifted, and the reasons for imposing them in the first instance.
17. Equally, careful consideration should be given by the reviewing lawyer in cases which fail to attract media interest but which, nonetheless, would be likely to generate *widespread public concern* were the circumstances more widely known. It is accepted that media interest can fluctuate and the extent to which they may be reported may be dictated by editorial slant in some sections of the media or by other competing new stories.

### **Highly Specialised Knowledge**

18. Knowledge in this heading must be 'over and above' the knowledge expected for a large fraud case.
19. The level of 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.
20. It is expected that, as a prerequisite, advocates instructed to prosecute in large fraud cases will be able to demonstrate a certain level of skill and expertise in dealing with large fraud cases, cases involving serious financial impropriety and complex financial transactions. They would be expected to be familiar, or equipped to deal, with most matters frequently prosecuted by the Serious Fraud Office, Customs or the CPS Central Fraud Group. These would include Carousel Fraud, VAT Fraud, Money Laundering, Phoenix Frauds and Advance Fee Fraud.
21. To meet the criterion the area of skill or expertise must be outside the usual scope of a criminal fraud practitioner's expertise. Good examples would be:
  - a. Non-legal professional regulations
  - b. Specialist tax knowledge, including the extent to which a tax liability may arise
  - c. Investment banking law and the understanding of trading and banking practice, Financial Services Authority (FSA) regulation, the Financial Services Management Act (FSMA) and the Swiss Financial Markets Authority (FINMA) Regulations



- d. Construction industry frauds, including knowledge of legislation and regulations and the complex third party disclosure issues which result
  - e. Constitutional / jurisdictional issues regarding the use of evidence from prosecutions in foreign jurisdictions
  - f. In strategic export cases, knowledge of the export regulations, the work of export control organisations, and the complex third party disclosure issues which result
  - g. Bankruptcy law or other civil proceedings relevant to criminal fraud proceedings
  - h. Highly complex disclosure issues relating to third party material held, for example, within HMRC records, or by foreign authorities.
22. Matters that do not go to the legal heart of the case will not usually merit *highly specialised knowledge*, as anticipated in the criteria.

### **Significant International Dimension**

23. Cases meeting this criterion will involve a non UK element of either fact or law, or both. For international dimension to be deemed 'significant', it must have a direct effect on the advocate's understanding of the case and substantially affect case preparation.
24. In respect of the legal dimension, the requirement to understand the workings of non-UK jurisdictions, the need for substantial liaison with lawyers abroad or foreign authorities and to understand and assess parallel or linked proceedings in foreign jurisdictions are all likely to be factors.
25. In respect of the factual dimension, key elements of the offence must have been perpetrated abroad and, as a consequence, the advocate will require an understanding of the workings of systems or institutions different from those in the UK.
26. Good examples of elements which may feature in cases which involve a significant international dimension would be:
- a. State sponsored crime
  - b. Interest by a foreign government
  - c. Cases which substantially rely on evidence from abroad
  - d. Joint Investigation Teams (JITs) involving a number of countries where jurisdictional and disclosure issues arise
  - e. Substantial disclosure material in the hands of a foreign country
  - f. The need to interview a number of witnesses abroad in relation to a key area of evidence
  - g. Calling a foreign expert in relation to the legality of methods in obtaining evidence (e.g. telephone intercept evidence) and the conformity of the law of the country

- h. Targeting of countries with which the UK has no formal Mutual Legal Assistance or Extradition treaty
  - i. The need for continuing liaison with lawyers abroad
- 27. Incidental details would be insufficient to meet this criterion, such as:-
  - a. The defendant is a foreign national
  - b. There are foreign witnesses
  - c. Goods or money have been received from or deposited, outside the UK

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

- 28. In order to meet this criterion legal, investigative and accountancy skills must be necessary and interrelated.
- 29. It is accepted that, by their very nature, large fraud cases may require the advocate to display degrees of legal, accountancy and investigative skill. However, as with highly specialised knowledge, the requirement for the advocate to bring together these skills must be 'over and above' what would normally be expected for a large fraud case.
- 30. In considering this criterion, the reviewing lawyer should assess the role the advocate has been specifically instructed to perform; whether it is to provide pre-charge 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 the advocate to display a combination of legal, accountancy and investigative skills in the early stages of the police investigation.
- 31. 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 their client's case, as a member of the Prosecution Team, the prosecuting advocate will be working alongside the investigating officers who will provide their own expertise. Account should also be taken of the contribution made by outside experts, such as forensic accountants.

### **Value of Fraud**

- 32. The value of the fraud for the purposes of Block B is deemed to be the value of the fraud disclosed on the face of the papers served in evidence by the Prosecution in relation to the counts on the indictment.

### **Trial Estimate**

- 33. The trial estimate for the purposes of Block B is deemed to be the formal trial estimate as confirmed by the court. Where a single trial is listed this will be the estimated length of that trial. Where, for case management purposes, a case

is prosecuted as a series of separate trials the estimated trial length will be deemed to be the cumulative length of those trials as confirmed by the court.

## **NON-FRAUD CASES**

### **Class 1 Offences**

34. For the purposes of trial in the Crown Court, Class 1 offences are classified as follows:

- a. Misprision of treason and treason felony
- b. Murder
- c. Genocide
- d. Torture, hostage taking and offences under the *War Crimes Act 1991*
- e. Offences under the *Official Secrets Act*
- f. Manslaughter
- g. Infanticide
- h. Child destruction
- i. Abortion (*Offences against the Person Act 1861*, s.58)
- j. Sedition
- k. An offence under the Geneva Convention Act 1957, s.1
- l. Mutiny
- m. Piracy
- n. Soliciting, incitement, attempt or conspiracy to commit any of the above offences

### **Class 2 Offences**

35. For the purposes of trial in the Crown Court, Class 2 offences are classified as follows:

- a. Rape
- b. Sexual intercourse with a girl under 13
- c. Incest with a girl under 13
- d. Assault by penetration
- e. Causing a person to engage in sexual activity, where penetration is involved
- f. Rape of a child under 13
- g. Assault of a child under 13 by penetration
- h. Causing or inciting a child under 13 to engage in sexual activity, where penetration is involved
- i. Sexual activity with a person with a mental disorder, where penetration is involved
- j. Inducement to procure sexual activity with a mentally disordered person where penetration is involved

- k. Paying for sexual services of a child where the child is under 13 and penetration is involved
- l. Committing an offence with intent to commit a sexual offence, where the offence is kidnapping or false imprisonment
- m. Soliciting, incitement, attempt or conspiracy to commit any of the above offences.

**The maximum sentence for the offence is imprisonment for life or over 30 years**

36. The following offences are also punishable with life imprisonment

- a. Robbery
- b. Perverting the court of justice
- c. Production of Class A controlled drug
- d. Supply/possession with intent to supply of Class A controlled drug
- e. Arson with intent to endanger life
- f. Possession of firearms with intent to endanger life
- g. Aggravated burglary
- h. Burglary of a dwelling house (for a third separate qualifying conviction for domestic burglary, following Powers of Criminal Courts Sentencing Act 2000 and CJA 2003)

**Widespread Public Concern**

- 37. As with fraud cases, non-fraud cases which generate *widespread public concern* shall feature at their core matters of significant interest and importance which are likely to cause all or most members of the general public anxiety and unease.
- 38. This criterion is designed to reflect the additional burden placed upon advocates prosecuting cases of high importance, which attract far greater public scrutiny, and therefore present an enhanced reputational risk as a consequence.
- 39. Examples of non-fraud cases which generated *widespread public concern* at the level sufficient to meet this criterion are as follows:
  - a. *R v Morley, R v Chaytor, R v Devine and R v Illsey (and others)* – false accounting prosecutions in respect of parliamentary expenses.
  - b. *R v Stephen Wright* (Operation Sumac) – the murder of five young women in Suffolk during a 10 day period in December 2006.
  - c. *R v Moucher & Ors* – the prosecution of a number of serving and retired police officers for conspiracy to pervert the course of justice in respect of the investigation into the murder of Lynette White and subsequent criminal trials.

- d. R v Harwood – the prosecution of a serving Met police officer for the manslaughter of a newspaper seller during the G20 riots in 2009.
  - e. R v Commissioner of Police – the prosecution of the Metropolitan Police for Health and Safety at Work Act offences in relation to the death of Jean Charles De Menezes at Stockwell tube station in 2005.
  - f. R v Lin Liang Ren & Ors (Operation Lund) – manslaughter case brought following the deaths of 23 cockle pickers at Morecambe Bay in 2004.
  - g. R v Ahmed & 9 Ors (Operation Span) – a prosecution in respect of a group of Asian males from Rochdale for offences including rape, sexual grooming and sexual trafficking of a number of teenage girls.
  - h. R v Colin Norris (Op Bevel) – nurse convicted in 2008 of murdering 4 elderly patients at Leeds General Infirmary.
  - i. R v Ashley & Ors (Operation Westbere) – Fire Service incident commanders charged with gross negligence manslaughter over the deaths of 4 fire fighters during a warehouse fire
  - j. R v Ikilat & Ors (Operation Eaglewood) – a series of 16 linked trials resulting from the seizure of 100kg of cocaine and the largest simultaneous police raid mounted by the Met police.
40. Cases which generate concern from a specific interest group or groups do not meet the criterion.
41. In some instances the level of media interest in a particular case may be seen as an indication of the public concern it has generated. Cases which generate *widespread public concern* are likely to be the focus of extensive interest, and trigger editorial debate, across the broadcast, print and electronic media.
42. In considering this aspect, it should be noted that most large cases will warrant reporting to some degree and media interest can often be generated based on incidental factors, such as the public profile of the defendant, rather than the issues central to the case. The reporting of a case in which the defendant is a well known public figure is not of itself sufficient to meet this criterion.
43. Whilst media interest may be indicative of *widespread public concern* it is recognised that restrictions on the reporting of cases of potentially high public importance may result in little or no publicity. In these instances, the reviewing lawyer should take into account the type of publicity generated were those restrictions to be lifted, and the reasons for imposing them in the first instance.
44. Equally, careful consideration should be given by the reviewing lawyer in cases which fail to attract media interest but which, nonetheless, would be likely to generate *widespread public concern* were the circumstances more widely known. It is accepted that media interest can fluctuate and the extent to which they may be reported may be dictated by editorial slant in some sections of the media or by other competing new stories.

**Value of drugs**

45. 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 categorising the case.

**EXTRADITION PROCEEDINGS****Exceptional and significant international dimension**

46. All extradition cases involve a non UK element of either fact or law, and usually both. For the international dimension to be deemed 'exceptional and significant', it must go to the heart of the case, have a direct effect on the advocate's understanding of the case and substantially affect case preparation.
47. In respect of the legal dimension, the requirement to understand the workings of non-UK jurisdictions, the need for substantial liaison with lawyers abroad or foreign authorities and to understand and assess parallel or linked proceedings in foreign jurisdictions are all likely to be factors.
48. In respect of the factual dimension, there must be a requirement for the advocate to have a substantial understanding of the workings of systems or institutions different from those in the UK.
49. Incidental details which would be insufficient to meet this criterion include:
- The defendant is a foreign national
  - There are foreign witnesses.
  - Any further information required from the requesting State/judicial authority which is of a routine and straightforward nature.

**Widespread public concern**

50. Extradition cases which generate *widespread public concern* will feature at their core matters of significant interest and importance which are likely to cause all or most members of the general public anxiety and unease. In an extradition case relevant public concern could be generated in this jurisdiction or in the requesting State or both.
51. This criterion is designed to reflect the additional burden placed upon advocates conducting cases of high importance, which attract far greater public scrutiny, and therefore present an enhanced reputational risk as a consequence.

52. Cases which generate concern from a specific interest group or groups do not meet the criterion.
53. In some instances the level of media interest in a particular case may be seen as an indication of the public concern it has generated. Cases which generate *widespread public concern* are likely to be the focus of extensive interest, and trigger editorial debate, across the broadcast, print and electronic media.
54. In considering this aspect, it should be noted that most large cases will warrant reporting to some degree and media interest can often be generated based on incidental factors, such as the public profile of the defendant, rather than the issues central to the case. The reporting of a case in which the defendant is a well-known public figure is not of itself sufficient to meet this criterion.
55. Careful consideration should be given by the extradition lawyer in cases which fail to attract media interest but which, nonetheless, would be likely to generate *widespread public concern* were the circumstances more widely known. It is accepted that media interest can fluctuate and the extent to which they may be reported may be dictated by editorial slant in some sections of the media or by other competing new stories.

#### **Exceptionally sensitive material**

56. Extradition cases may sometimes involve the consideration of sensitive material. This factor adds a layer of complexity to the conduct of the case both in terms of deciding how far such material may be used forensically and observing the need to safeguard the material from inadvertent disclosure. This does not, of itself, meet the criterion.
57. However, in some cases, the material may be so sensitive that it carries with it a substantial risk to future working relationships between the law enforcement or intelligence agencies of the United Kingdom and its partners, if the material is not handled appropriately by the advocates to whom it is revealed in the course of proceedings. Additionally, the nature of the material may in exceptional cases be such as to raise significant issues relating to the CPS' duty of candour and good faith to the court. These are likely to be important factors in deciding whether the criterion is met, particularly if either gives rise to the need for exceptional *ex parte* or *in camera* hearings before the court.
58. This criterion is designed to reflect the additional burden placed upon advocates conducting cases involving exceptional amounts of sensitive material or limited amounts of material of exceptional sensitivity going to the very working of one or more law enforcement or intelligence agencies. Such factors present an enhanced reputational risk and may substantially affect the preparation and handling of the case.

**Serious implications for the future operation of extradition arrangements or diplomatic relations**

59. Where the facts of the request give rise to a substantial risk that an adverse outcome will seriously harm the ability of the requesting territory (or other territories similarly placed) to make applications successfully in the future, this factor should be taken into account in deciding whether the criterion is met. It is likely to be met only where it is obvious (either at the outset or on from consideration of the defence case) that at least one of the grounds for refusing the application would operate to exclude entirely applications of a similar nature unless the requesting state alters its laws or procedure. An example might be a decision by the domestic courts that a territory is in significant and continuing breach of one or more of its obligations under a convention guaranteeing fundamental rights.
60. The possibility that such an outcome could also have serious detrimental effects on diplomatic relations between the UK and the requesting State is another factor that may be taken into account when deciding if this criterion is met. The gravity of this factor is likely to be evidenced by the level of interest shown in the case by officials from other Government Departments.
61. While some such cases will proceed to the Supreme Court for determination the possibility of these outcomes arising from a first instance ruling or on appeal to the High Court should not be overlooked when setting the fee level in each case.

**Legal Aid Agency VHCC**

62. As with the prosecution scheme, the LAA VHCC scheme uses fee selection criteria to determine the appropriate fee category. The LAA 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 the prosecuting advocate(s), as it is for the defence advocate(s).
63. However, given the differences in the criteria and that the LAA and CPS assess cases independently, there may be occasions when the fee category determined for the defence advocate(s) and prosecuting advocate(s) instructed on the same case differs.
64. The CPS Court Business Unit maintains close links with the LAA; 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.



**Annex C – Glossary**

“Barrister” or “Advocate” means a member of the independent Bar appearing on the CPS Advocates Panel instructed by the Crown Prosecution Service or a CPS Crown Advocate.

“Case Auditor” means a person appointed to audit and pay the fees in a Very High Cost Case in advice, Crown Court, Court of Appeal and higher court cases.

“Conference” means a meeting between trial advocates / disclosure 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 if such a conference was necessary and the reviewing lawyer could not be contacted.

“Appeal Committee” means the committee with the function of determining appeals under these arrangements.

“CBU” means Court Business Unit, part of the Operations Directorate, CPS Headquarters.

“Fraud Case” means a case, in which the offence with which the defendant is charged is primarily, or substantially, founded on allegations of fraud or other serious financial impropriety or involves complex financial transactions or records.

“Head of Fees” means a person employed by the CPS with the title ‘Head of Fees’.

“Other Hearing” means any hearing in a Very High Cost Case which lasts 2 hours or less. This term does not apply to hearings forming part of an effective trial which last less than 2 hours, or to substantive appeal hearings, which last less than 2 hours.

“Pages of Served Prosecution Evidence” – for the purposes of paragraph 4.1.2b of this document, the pages of served prosecution evidence means the number of pages formally served in evidence as defined at paragraphs 61 to 77 of the Graduated Fee Scheme – Scheme C – Manual of Guidance (March 2012).

“Prosecution documentation” means all material sent to the prosecution advocate in advice cases, or all material excluding unused material sent to the prosecution advocate in Crown Court cases

“Return” means a brief that is returned by the instructed advocate to another advocate because they are unable to represent the prosecution at trial or the main hearing.

“Significant” means an issue of sufficient weight and complexity that makes the case different from other cases of the same type thereby increasing its comparative value.

“Single core bundle” means a single bundle of evidence upon which an indictment, or any number of indictments, against a defendant, or any number of indictments, is based.

“Stage” means a period of time (normally 8-12 weeks) agreed by the reviewing lawyer and the advocate in which the advocate will conduct pre-trial preparation.

“Terrorism Case” means a case in which the main offence with which the defendant is charged, whether at common law or under the statutory enactment, is primarily, or subsequently, founded on allegations of terrorism as defined in the Terrorism Act 2000.

“Timely Payment” means a payment made to the advocate within 20 working days of receipt of a valid invoice.

“Trial Team” means the CPS reviewing lawyer, the CPS paralegal officer and advocates instructed to prosecute the case on behalf of the CPS.

“Very High Cost Case” or “VHCC” means a case which if it proceeds to trial that trial is likely to last 41 days or longer and is so endorsed on the Plea and Case Management Hearing questionnaire or a case with three or more trial counsel instructed in the preparation and presentation of the case.

“Very High Cost Fraud Case” means a case that is a Fraud Case and a Very High Cost Case.

“Work Records” means an auditable and detailed record of all chargeable work, advocacy and travel time. The work done must be recorded using the CPS VHCC work log template at or about the time that the activity is undertaken.