

# **APPLICATION UNDER PARAGRAPH 11 OF SCHEDULE 1 OF THE CRIMINAL DEFENCE SERVICE (FUNDING) ORDER 2007 – ADVOCACY PAYMENT IN CONFISCATION CASES**

## **GUIDANCE NOTES**

1. The Criminal Defence Service (Funding) (Amendment No. 2) Order 2009 introduced new fees for advocacy in confiscation hearings concluded on or after 21 August 2009 where there are more than 50 pages of evidence.
2. The type of pages that count towards that evidence are set out in the Order and repeated in the form attached that should be used to apply for payment.
3. A form that should be used to claim these fees is attached. The main graduated fee should be claimed in the usual way and sent to the appropriate Crown Court centre.
4. Applications for payment in cases with more than 50 pages, and any associated claim for additional half-day or full day advocacy fees for the second and any subsequent days of the confiscation hearing, should be submitted to the National Taxing Team as set out below.
5. Applications sent to the National Taxing Team must be supported by a copy of all the pages that are included in the claim form (at sections A, B and C). Please show clearly, by reference to page number or paragraph number, where any pages claimed under part B are referred to in the statement of information served under section 16 of the Proceeds of Crime Act 2002 (or the other two Acts mentioned). The mention of a witness by name or reference to an exhibit in the statement is not sufficient to mean that the statement of that witness or the exhibit necessarily count towards pages of evidence. The statement must make clear that the witness statement or exhibit itself is specifically relied upon for the purposes of the confiscation hearing and would have been exhibited with the section 16 statement had it not already been served.
6. Claims may include, at part C, pages of a written report of an expert obtained by the defence with the prior authority of the Commission under CDS Regulations or allowed by the appropriate officer under the Funding Order (in this case that would be allowed by the LSC as part of the LGFS payment). Claims may not include any documents contained in such annexes or exhibits which have already been counted under parts A or B of the claim or which consist of financial records or similar data.
7. Other graduated fees claims for the same case should be submitted to the Crown Court in the usual manner.
8. All other claims for confiscation hearings, where there are less than 50 pages of evidence, should be included in the usual claim for payment and submitted to the Crown Court.
9. The new payments for confiscation are banded according to the number of pages, but advocates should note that page count is used as an approximation of complexity. There is no underlying rate per page that is used to calculate fees. So, for example, a junior advocate making a claim for a case with 55 pages and a junior advocate making a claim for a case with 240 pages would both receive a fee of £500 (plus VAT if appropriate).
10. Please note that in order to properly assess the overall work on a case where there are 1,001 pages (or more) all hours worked should be included in Part B. The Determining Officer will allow the number of hours believed to be reasonable in the circumstances of

the case, at the appropriate hourly rate. From that allowance the Determining Officer shall subtract the first 25 hours, to reflect the work done on the first 1,000 pages which is paid for at the fixed rate for cases with 750 to 1,000 pages. Advocates may claim the fixed fee for 751 to 1,000 pages of evidence automatically when the total pages of evidence (as defined) are 1,001 or more.

11. Please use part C for claims for additional days and half days of the confiscation hearing. Please note that the first day is included in the fee claimed in Part A.
12. Claims that should be submitted to the National Taxing Team should be sent to the regional office covering the appropriate Crown Court centre:

**Birmingham and Cardiff Region; Regional Manager, Phil Sulley**

3rd floor, Temple Court , 35 Bull St, Birmingham B4 6LG.  
DX 701991 BIRMINGHAM 7  
Tel: 0121 681 3262 Fax: 0121 681 3270  
Email: Adminntt.bham@justice.gsi.gov.uk

Aylesbury	Harrow	Plymouth
Basildon	Ipswich	Shrewsbury
Birmingham	Leicester	St.Albans
Bristol	Luton	Stafford
Cambridge	Maidstone	Stoke
Canterbury	Merthyr Tydfil	Swansea
Cardiff	Northampton	Swindon
Coventry	Norwich	Taunton
Croydon	Nottingham	Truro
Exeter	Oxford	Warwick
Gloucester	Peterborough	
Wolverhampton		
Worcester		

**Doncaster Region; Regional Manager, Roger Pendleton**

c/o Crown Court College Road DN1 3HS. DX 703005 DONCASTER 5  
Tel: 01302 363 988 Fax: 01302 322441  
Email: NTTDONADMIN@hmcourts-service.gsi.gov.uk

Bradford	Grimsby	Newcastle
Derby	Kingston upon Hull	Sheffield
Doncaster	Leeds	Teesside
Durham	Lincoln	York

**Manchester and Winchester Region; Regional Manager, Sandra Crossley**

3rd Floor, c/o Salford County Court, Prince William House, Salford M5 4RR.  
DX 702633 Salford 5  
Tel: 0161 745 4240 Fax: 0161 745 4268  
Email: AdminManchesterNtt@HMCOURTS-SERVICE.GSI.GOV.UK

Blackfriars	Burnley	CCC (Old Bailey)
Bolton	Caernarfon	Chelmsford
Bournemouth	Carlisle	Chester

Chichester  
Guildford  
Inner London  
Isleworth  
Kingston  
Knutsford  
Lewes  
Liverpool  
Woolwich

Manchester (Crown Square)  
Manchester (Minshull St)  
Mold  
Newport (I.O.W)  
Portsmouth  
Preston (Barrow and Lancaster)  
Reading  
Salisbury

Snaresbrook  
Southampton  
Southwark  
Warrington  
Weymouth & Dorchester  
Winchester  
Wood Green

Case No.

Crown Court at \_\_\_\_\_

**APPLICATION UNDER PARAGRAPH 11 OF SCHEDULE 1 OF THE CRIMINAL  
DEFENCE SERVICE (FUNDING) ORDER 2007 – ADVOCACY PAYMENT IN  
CONFISCATION CASES**

**NOTE**

This application must be forwarded to the appropriate National Taxing Team Office as soon as possible and in any event no later than **THREE** months after the conclusion of the confiscation hearing. This time limit will only be extended by the Determining Officer for good reason.

**Name of Defendant(s):**

**Date of Conclusion of  
Confiscation Hearing:**

(NB Must be on or after  
21 August 2009)

 / 

**Instructed Advocates  
Name and Address:**

**Telephone Number:**

**VAT Number:**

## A - COUNSELS FEES INC VAT

	Specify	No of Pages
<b>A</b>	<p>Total number of <u>pages of the statement of information</u> served under section 16 of the Proceeds of Crime Act 2002* and relied on by the prosecution for the purposes of a confiscation hearing under Part 2 of that Act and any attached annexes and exhibits.</p> <p>(* or any similar statement served under section 2 of the Drug Trafficking Act 1994 or under section 71 of the Criminal Justice Act 1988)</p> <p><b><u>Please supply a copy of all pages above.</u></b></p>	
<b>B</b>	<p>Total number of pages of any other document which—</p> <p>(i) is served as a statement or an exhibit for the purposes of the trial;</p> <p>(ii) is specifically referred to in, but not served with, a statement mentioned at A above; and</p> <p>(iii) the prosecution state that they intend to rely on in the hearing.</p> <p><b>Please specify where in the statement at A above these further pages are referred to by page and/or paragraph number.</b></p> <p><b><u>Please supply a copy of all pages above.</u></b></p>	
<b>C</b>	<p>Total number of pages of any written report of an expert obtained with the prior authority of the Commission under CDS Regulations or allowed by the appropriate officer under this Order, and any attached annexes and exhibits. This should exclude any documents already served under A or B above or which consist of financial records or similar data.</p> <p><b><u>Please supply a copy of the prior authority and all pages above.</u></b></p>	
	<b>Total Number of Pages</b> (NB if total pages amount to 1,001 or more please claim fee for up to 1,000 pages here, but also complete table B below)	
	<b>Amount Claimed</b>	
	<b>VAT Claimed</b>	
	<b>Total Claimed</b>	
<b>NTT USE ONLY</b>	<b>Amount Allowed</b>	
	<b>VAT Allowed</b>	
	<b>Total Allowed</b>	



<b>TOTAL</b>					

**I confirm that none of the work/appearances listed above have been claimed as part of the normal Advocates Graduated Fee claim.**

**Signed by Instructed Advocate:**

**Date of Application:**

**NTT USE ONLY**

<b><u>Total allowed (Part A)</u></b>	
<b><u>Total allowed (Part B)</u></b>	
<b><u>Total allowed (Part C)</u></b>	
<b><u>Grand Total allowed</u></b>	

# APPENDIX A

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## STATUTORY INSTRUMENTS

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**2009 No.0000**

### **LEGAL SERVICES COMMISSION, ENGLAND AND WALES**

#### **The Criminal Defence Service (Funding) (Amendment No. 2) Order 2009**

<i>Made</i>	- - - -	<i>2009</i>
<i>Laid before Parliament</i>		<i>2009</i>
<i>Coming into force</i>	- -	<i>21st August 2009</i>

The Lord Chancellor makes this Order in exercise of the powers conferred by section 14(3) of the Access to Justice Act 1999(1).

He has had regard to the matters specified in section 25(3) of that Act and has consulted the General Council of the Bar and the Law Society in accordance with section 25(2) of that Act.

#### **Citation, commencement, interpretation and application**

1.—(1) This Order may be cited as the Criminal Defence Service (Funding) (Amendment No. 2) Order 2009 and comes into force on 21st August 2009.

(2) In this Order “the 2007 Order” means the Criminal Defence Service (Funding) Order 2007(2).

(3) This Order applies to hearings to which paragraph 11 of Schedule 1 to the 2007 Order applies and which are concluded on or after 21st August 2009.

#### **Amendment to the Criminal Defence Service (Funding) Order 2007**

1. Schedule 1 to the 2007 Order is amended as follows.

2. In paragraph 11(2), for the words from “for attendance” to the end substitute—

“in respect of such a hearing—

(a) where the number of pages of evidence is fewer than 51, for attendance—

(i) in respect of any day when the hearing begins before and ends after the luncheon adjournment, at the daily rate set out in the first section of the table following this subparagraph; or

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(1) 1999 c.22. The reference to the Lord Chancellor was changed to the Secretary of State by S.I. 2003/1887 and changed back by S.I. 2005/3429.

(2) S.I. 2007/1174; there is one relevant amending instrument, S.I. 2007/3552.



- (ii) in respect of any day when the hearing begins and ends before the luncheon adjournment, or begins after the luncheon adjournment, at the half-daily rate set out in the first section of that table,

as appropriate to the category of trial advocate or substitute advocate;

- (b) where the number of pages of evidence is between 51 and 1000—

- (i) at the rates for the relevant number of pages set out in the second section of the table following this sub-paragraph; and

- (ii) where the hearing lasts for more than one day, for attendance on subsequent days or half-days at the daily rate or half-daily rate set out in the first section of that table,

as appropriate to the category of trial advocate or substitute advocate; or

- (c) where the number of pages of evidence exceeds 1000—

- (i) at the rates for 751 to 1000 pages set out in the second section of the table following this sub-paragraph;

- (ii) with such fee as the appropriate officer considers reasonable for preparation in respect of the pages in excess of 1000, at the hourly rates for preparation set out in the third section of that table; and

- (iii) where the hearing lasts for more than one day, for attendance on subsequent days or half-days at the daily rate or half-daily rate set out in the first section of that table,

as appropriate to the category of trial advocate or substitute advocate

<b>Fees for confiscation hearings</b>	Fee for QC	Fee for leading junior	Fee for junior alone	Fee for led junior
<i>1 - Daily and half-daily rates</i>				
Half-daily rate	£300	£225	£150	£150
Daily rate	£575	£400	£275	£275
<i>2 - Pages of evidence</i>				
51-250	£750	£625	£500	£375
251-500	£1,125	£938	£750	£562
501-750	£1,500	£1,250	£1,000	£750
751-1000	£2,250	£1,875	£1,500	£1,125
<i>3 - Preparation</i>				
Hourly rates	£85	£65	£45	£45"

1. After paragraph 11(2) insert—

“(3) In sub-paragraph (2) “evidence” means—

- (a) the statement of information served under section 16 of the Proceeds of Crime Act 2002 and relied on by the prosecution for the purposes of a hearing under Part 2 of that Act, or a similar statement served and so relied on for the purposes of a hearing under section 2 of the Drug Trafficking Act 1994 or under section 71 of the Criminal Justice Act 1988 and, in each case, any attached annexes and exhibits;

- (b) any other document which—

- (i) is served as a statement or an exhibit for the purposes of the trial;

- (ii) is specifically referred to in, but not served with, a statement mentioned in paragraph (a); and

- (iii) the prosecution state that they intend to rely on in the hearing; and

- (c) any written report of an expert obtained with the prior authority of the Commission under CDS Regulations or allowed by the appropriate officer under this Order, and any attached annexes

and exhibits, other than documents contained in such annexes or exhibits which have also been served under paragraph (a) or (b) or which consist of financial records or similar data.”.

2. In the table after paragraph 19 omit the entry relating to confiscation hearings.

Signed by authority of the Lord Chancellor

Date

*Name*  
Parliamentary Under Secretary of State  
Ministry of Justice

#### **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order amends the Criminal Defence Service (Funding) Order 2007, which makes provision for the funding and remuneration of services provided as part of the Criminal Defence Service. The Order increases the fees payable to advocates in confiscation proceedings.

## **APPENDIX B**

To: All Heads of Chambers  
All Senior Clerks and Practice Managers

4 August 2009

### **REVISED FUNDING ORDER FOR PAYMENT OF CONFISCATION PROCEEDINGS FEES: TO APPLY IMMEDIATELY TO ALL CONFISCATION CASES OTHER THAN THOSE WHICH ARE CONCLUDED BEFORE 21<sup>ST</sup> AUGUST 2009**

The cases of Campbell, Carlton and R v P have highlighted the difficulty in obtaining Advocates prepared to act in complex confiscation cases under the Advocates Graduated Fees Scheme.

The current payment scheme for defence counsel for confiscation in the CDS Funding Order 2007, pays a daily fixed fee only: there is no remuneration for preparation. In complex confiscation cases this is wholly inadequate.

Following discussions with the Bar Council, the Ministry of Justice has amended the Criminal Defence Service (CDS) Funding Order 2007. Their revised Funding Order will be laid before Parliament and is intended to come into force on 21 August 2009. The final draft of the Order is attached hereto. The formal Order will be available online next week at <http://www.opsi.gov.uk/>.

The Funding Order will apply to all confiscation hearings which are concluded on or after 21<sup>st</sup> August 2009. It will, in effect apply to preparatory work currently being undertaken. The effect of the new funding order is to pay increasing levels of enhanced fees in graduated fee cases where the page count in confiscation proceedings exceeds 50 pages. The fees will include the first day of the confiscation hearing. Any subsequent days, or half days will be paid at the current rates.

Where the page count exceeds 1,000 pages, the advocate will receive the payment appropriate for 750-1,000 pages, but can apply to the NTT for additional hours properly and reasonably spent in preparation. These will be remunerated at what amount to the current special preparation rates.

Guidelines will be issued to Determining Officers at the NTT in respect of cases in excess of 1,000 pages to the effect that the Determining Officers will calculate the number of hours reasonably expended, apply the appropriate hourly rate and then deduct from that total the pages of evidence payment less the daily or half daily rate as appropriate.

For example, if 100 hours was reasonably incurred by a Junior in a two day confiscation hearing, the formula would be  $100 \times £45 = £4,500$  less  $(£1,500 - £275) = £3,275$ .

Paragraph 5 states that the page count is to be calculated by reference to:

- (i) the section 16 (or similar) statement, together with any annexes or exhibits attached thereto;
- (ii) documents referred to in that statement which formed part of the trial bundle and are intended to be relied upon by the prosecution for the purpose of the hearing;
- (iii) defence expert reports obtained with the prior authority of the LSC and material annexed thereto which is not otherwise relied upon by the prosecution.

Pages from the main bundle relied upon by the prosecution must be clearly identified in the s.16 statement. If these are not clearly identified, then it is recommended that defence counsel write to the prosecution and seek clarification as to precisely what the prosecution are relying on.

All confiscation payments under the revised Funding Order will be channelled through the National Taxing Team (NTT). Page counts will have to be supported by evidence as counsel may be required to produce the pages relied upon to the NTT.

However, it must be stressed that counsel will not qualify for additional hourly payments, even if the page count exceeds 1,000 pages, if they have not kept records of the hours worked and the nature of the work undertaken.

Counsel should be aware that the payment for confiscation proceedings will not be funded through a reduction elsewhere in the legal aid budget, but will come from elsewhere, possibly from monies obtained from confiscation proceedings.

Counsel should also be aware that the *Protocol for Counsel in relation to Confiscation of Graduated Fee Cases* still applies. Whether, and to what extent it may be considered applicable in any given case will depend upon individual assessment of the potential complexity of any confiscation proceedings and the remuneration which may be anticipated for those proceedings.

**Andrew Mitchell QC**  
**Treasurer**  
**The General Council of the Bar**

**Tony Shaw QC**  
**Vice Chairman**  
**Fees and Remuneration Committee**

