



## **Crown Court defence legal aid, Advocates' Graduated Fee Scheme (AGFS) Unused Material Claims**

It has come to the attention of the Remuneration Committee of the Bar Council that at present Counsel are **not** regularly claiming payment for reading unused material when they are entitled to do so.

Counsel should bear the following in mind:

1. Where counsel is instructed in criminal work remunerated by a legal aid order paid under AGFS Scheme 12, and where the order has been granted **on or after 17 September 2020**, you are reminded of the Criminal Legal Aid Review (CLAR) "Accelerated" provisions brought in the force by The Criminal Legal Aid (Remuneration) Regulations 2020 SI 202 No.903.
2. These provisions entitle Counsel to claim for payment to read unused material where a graduated fee is payable (other than a guilty plea (i.e. a cracked trial or trial fee claims)).
3. The LAA Guidance on unused material claims is located here: <https://www.gov.uk/guidance/claim-for-criminal-legal-work-under-graduated-fee-schemes#unused-material>.
4. The LAA Guidance sets out that:
  - (a) Counsel will be paid a **fixed fee** for all claims made where the work on the unused material was between 0-3 hours duration. **No form or paperwork** is required to be submitted for this level of claim to be processed, the claim is paid as a fixed fee on the CCD. **The claims are not assessed** [see para 23, page 86, Annex E of Guidance detailed below].
  - (b) Any claims for work on unused material higher than 3 hours require a submission on **form AU3** and,
  - (c) where the claim exceeds 10 hours work the claim form **AU3** must be accompanied by a **work log**, the **schedule of unused material** and the **Disclosure Management Document** ('DMD').

5. A claim for reading unused material will be assessed in accordance with paragraph 2.17A page 36 of the LAA Crown Court Fee Guidance (ver.1.12) located here:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/947606/CCFG - Version 1.12 - October 2020.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/947606/CCFG_-_Version_1.12_-_October_2020.pdf)

6. The Guidance provides that where the higher claims for reading the material are made the appropriate officer must take into account:

- (a) the reasonableness of the hours claimed in respect of the case taken as a whole; **and**,
- (b) the reasonableness of the hours claimed in respect of the consideration of the unused material.

7. The larger the claim being made by Counsel for work done, the more detailed justification will be required by the LAA. At present specific attention will be paid to claims in excess of 30 hours or more. Counsel can be asked by the determining officer to furnish further details and the issues a determining officer might take into consideration in larger claims can be located in Appendix E page 84 and following of the Guidance.

In conclusion it is **important** to note that the vast majority of cases in the Crown Court will fall into the 0-3 hours bracket. The impact assessment forecast that 86% of claims would fall into the 0-3 hours bracket where no form is required, and no LAA assessment will be undertaken as to the fee to be paid because the work is regarded as being both appropriate and justified.

Counsel should therefore ensure that when they complete this work, and the other qualifying criteria are met, they and their fee clerks **claim** for the relevant payment for work done and which is paid in addition to the fixed graduated fee.

24 February 2021

Bar Council Remuneration Committee.