

### Transforming Legal Aid and Magistrates Court Fees Report by Gilles Ward, LLB, LLM, Costs Draftsman

The consultation document contains the following propositions<sup>1</sup>:

*4.101 We have therefore, as far as reasonably and economically practicable, designed a model that is based on fixed fees. In general, each provider would be remunerated for each stage of a case (police station, magistrates' court and most of work in the Crown Court) by way of separate and unique fee based on their bid price. For the magistrates' court and most of the work in the Crown Court, the provider would be paid their unique fixed fee for the particular stage for any and all cases falling within that stage. For example, the provider would be paid their same fixed fee for all cases at the magistrates' court stage, regardless of how long or short the case. For work at the police station, the provider would be remunerated in a block payment rather than per case, but the block payment would be based on the provider's unique fixed fee.*

and

*4.109 We propose replacing the Standard Fee scheme in the magistrates' court with a fixed fee scheme. Each provider would be paid a different fee depending on their bid price. However, we would no longer distinguish between different types of magistrates' court case outcome and there would be no escape mechanisms outside of the fixed fee scheme.*

*4.110*

*In order to determine the magistrates' court fixed fee for each provider, we would apply the following process:*

*(i) From 2012/13 claim volume and value data, calculate the average magistrates' court representation claim in each procurement area by taking the total expenditure in the procurement area on magistrates' court representation and dividing that total by the volume of claims in that area;*

*(ii) Set a price cap at 17.5% below the average magistrates' court representation claim value;*

*(iii) Invite applicants to submit a bid price at or below the price cap value. This becomes the provider's unique fixed fee for magistrates' court representation.*

The average values of fees for work in the magistrates' court work – per CJS area – are set out at Annex D of the consultation document.<sup>2</sup>

That average value ranges from £301 (Cleveland) to £671 (Northamptonshire).

It is understood that that average is arrived at by aggregating total Lower Standard Fee ('LSF'), Higher Standard Fee ('HSF') and Non Standard Fee ('NSF') Claims and deriving a mean.

LSFs are paid in a range of £173.45 to £378.46 and HSFs in a range of £417.20 to £792.71<sup>3</sup>

---

<sup>1</sup> At pages 61 to 63

<sup>2</sup> At page 118

<sup>3</sup> See Page 19 of the Standard Crime Contract Payment Annex

NSFs are paid on an ex post facto basis (that is by the hour) as they escape the current Standard Fee regime.

Figures are available providing a breakdown nationally as to the incidence of the different type of fee claims<sup>4</sup>:

*Proceedings claims – Percentage breakdown by fee type*

*The table below provides a percentage breakdown by fee type of Proceedings claims volumes for the period July 2010 to November 2012.*

*Table 11: Proceedings claims volume annual - % breakdown by fee type*

Year	LSF	HSF	NSF
2010/11	81%	14%	5%
2011/12	81%	14%	5%
2012/13 [year to date]	81%	15%	4%

LSFs are much more common than any other type of claim.

The process of aggregating all claims and deriving a mean is heavily skewed as a result.

Data has been sought from the Ministry of Justice (MoJ), in particular in respect of NSF claims but at the time of finalising this response it has not been forthcoming.

In order for a claim to qualify as a NSF, a minimum of 10 to 15 hours have to be spent in preparations and in advocacy. It is likely that many if not most NSF represent proceedings in which a summary trial<sup>5</sup> took place.

Data has also been requested from the Ministry of Justice in respect of summary trials and again has not yet been provided.

In the absence of that data, reference is made to actual individual cases (all personal identification withheld).

Summary trials occur where a defendant elects to be tried in the magistrates' courts (and the court accepts jurisdiction)<sup>6</sup>. Summary trials also occur where a defendant has no alternative other than to be tried in the magistrates' courts<sup>7</sup>.

Magistrates' courts can in such cases impose prison sentences of up to 12 months and fines of up to £50,000<sup>8</sup>. A number of specialist prosecutors (that is, other than the CPS) or other specialisms figure in summary trials, for example:

- Local authorities bring prosecutions in respect of intellectual property crimes<sup>9</sup>, to enforce planning decisions<sup>10</sup>, against the owners of livestock<sup>11</sup>, to ensure abatement

<sup>4</sup> *Crime Contracts Consultative Group (CCCG) Volume and Value figures report March 2013*

<sup>5</sup> For summary trial procedure, see Part 37 of the Criminal Procedure Rules

<sup>6</sup> For example, Affray (section 3 of the Public Order Act 1986) may be tried 'either way'.

<sup>7</sup> For example, Common assault (s39 Criminal Justice Act 1988).

<sup>8</sup> See Section 33(8)(a) of the Environment Protection Act 1990

<sup>9</sup> See Section 107(4)(a) and (4A) of the Copyright Designs and Patents Act 1988

<sup>10</sup> Section 179 (8)(a) of the Town and Country Planning Act 1990

of noise<sup>12</sup>, for failure to hold a horse passport<sup>13</sup> (for the 600,000 plus equines in the UK<sup>14</sup> – a widespread problem in respect of which the RSPCA has recently voiced concerns<sup>15</sup>).

- The Health and Safety Executive acts (or is empowered to instruct private solicitors) to bring prosecutions for the multiple offences set out at Section 33 of the Health and Safety at Work etc Act 1974<sup>16</sup>.
- The Vehicle and Operator Services Agency brings (through solicitors privately contracted to act) numerous prosecutions against goods vehicles drivers (where issues can be complex)<sup>17</sup>.
- The Environment Agency brings prosecutions for a long list of matters<sup>18</sup>, including a number of offences related to fishing – including angling without a license<sup>19</sup> and poaching (the most recent figures indicate 2,700 cases of the former and 138 of the latter<sup>20</sup>).
- The Royal Society for the Prevention of Cruelty to Animals brings prosecutions (again through the instruction of private solicitors) under the Animal Welfare Act 2006 and the Wildlife and Countryside Act 1981. There were approximately 1,600 such cases in 2011-2012<sup>21</sup>.

Because there are special considerations<sup>22</sup> cases involving those aged under 18 are tried in the Youth Courts.

Summary trials in these circumstances can involve complex legal argument, conflicting expert evidence, multiple witnesses, extensive case papers (running to several hundreds of pages) and be multi-handed. Trial preparation can also absorb a great deal of time.

A typical day at a summary trial involves 5-6 hours of advocacy and further time conferring with the client(s) and any witnesses and reviewing case papers. Summary trials can also last

---

<sup>11</sup> Further, for example, to:

- Section 2 of the Agriculture (Miscellaneous Provisions) Act 1968,
- Regulation 4A(a) of the Animal By-Products Regulations 2005,
- Regulation 6(1) of the Avian Influenza (Preventative Measures (No 2) Regulations 2005,
- Regulation 7(a) of the Welfare of Farmed Animals (England) Regulations 2007,
- Regulation 5(1)(b) of the Food (Hygiene and Enforcement) Regulations 2005,
- Regulation 13(1)(d) of the Cattle Identification Regulations 2007,
- Article 34A(1)(e) of the Sheep and Goats (Records, Identification and Movement) (England) (Order) 2005
- etc

<sup>12</sup> See Sections 79-80 of the Environment Protection Act 1990

<sup>13</sup> See Regulation 5 of the Horse Passport Regulations 2009

<sup>14</sup> <http://archive.defra.gov.uk/foodfarm/farmanimal/diseases/vetsurveillance/species/horses.htm>

<sup>15</sup> <http://www.rspca.org.uk/media/pressreleases/details/-/article/PressRSPCAFearsTheHorsePassportSystemIsBroken28Feb13>

<sup>16</sup> <http://www.hse.gov.uk/enforce/enforcementguide/court/sentencing-examples.htm>

<sup>17</sup> See *Vehicle and Operator Services Agency v Clayton* [2010] EWHC 289 (Admin) and *Platje v Vehicle and Operator Service Agency* [2011] EWHC 1369 (Admin)

<sup>18</sup> [http://www.environment-agency.gov.uk/static/documents/Business/1430\\_10\\_External.pdf](http://www.environment-agency.gov.uk/static/documents/Business/1430_10_External.pdf)

<sup>19</sup> See Section 27(1)(a) of the Salmon and Freshwater Fisheries Act 1975

<sup>20</sup> <http://www.environment-agency.gov.uk/homeandleisure/recreation/fishing/106771.aspx>

<sup>21</sup> <http://www.rspca.org.uk/in-action/whatwedo/prosecution/report>

<sup>22</sup> [http://www.cps.gov.uk/legal/v\\_to\\_z/youth\\_offenders/](http://www.cps.gov.uk/legal/v_to_z/youth_offenders/)

several days and sometimes for weeks – and in one case involving 5 defendants for 52 days<sup>23</sup>.

The Criminal Defence Service (General) (No 2) Regulations 2009 require, at Regulation 16A, that one litigator be appointed to represent all defendants in a case unless there is, or is likely to be, a conflict of interest.

Under the LSF/HSF system no additional payment is made for representing more than one defendant. The additional burden is however currently capable of being reflected in the NSF arrangements.

A ‘series of offences’ – that is, separate offences, charged separately but with a common factor – are treated for remuneration purposes as one case<sup>24</sup>, so for such cases no additional payment is made under the LSF/HSF system. Again, the additional burden represented by dealing with multiple incidents is currently reflected in the NSF arrangements.

The proposed fixed fee maxima for every single future magistrates court case are set out in the consultation document<sup>25</sup> and range from £248 (Cleveland) to £553 (Northamptonshire). That is, the total amount payable to a solicitor (perhaps representing several defendants) for undertaking a lengthy summary trial of the type described above would be £553 (in Northamptonshire – the fee would be much less elsewhere).

---

<sup>23</sup> <http://www.crimeline.info/case/r-james-julie-gray-v-crown-court-aylesbury>

<sup>24</sup> See Section 6.6 (Page 43) of the *Criminal Bills Assessment Manual* – at <http://www.justice.gov.uk/legal-aid/funding>

<sup>25</sup> See again page 118