



Legal Aid  
Agency

Providing access to justice through working with others  
to achieve excellence in the delivery of legal aid

# **AGFS - Help Us Say Yes Webinar – Your Questions**

## **CCCD and CLAIR**

May 2024



# Your questions answered:

**Q: Does the following scenario fall within the definition of a 'cracked trial' as set out in CLAR Regs 2013 Sch 2 as amended?**

1. PTPH (Plea and Trial Preparation Hearing) took place.
2. No trial occurred because either:
  - Our client, the defendant, pleaded guilty (GPs: Guilty Pleas).
  - The Crown Prosecution Service (CPS) offered no evidence.
3. Prosecution's Declaration:
  - The CPS did not declare, before or at the PTPH, their intention not to proceed with one or more counts.
  - After our client entered his pleas, the CPS offered no evidence for the count he pleaded not guilty to.
4. Trial Date Requirement:
  - There is no requirement in the regulations for a trial date to be listed.
  - Case law, such as *Fitton, R. v* [2022] EWHC 1542 (SCCO), supports the point that a trial date does not need to be fixed.

**A:** For specific case questions, we need to see the case log to give a thorough answer. If you need more details, you should email the AGFS team at [advocates-fee@justice.gov.uk](mailto:advocates-fee@justice.gov.uk)

## Key Points

1. **Plea and Trial Preparation Hearing (PTPH):**
  - Whether a PTPH took place and the case proceeded past this date is not relevant for deciding if it's a cracked trial.
2. **Definition of 'Cracked Trial as per The Criminal Legal Aid (Remuneration) (Amendment) Regulations 2015:**
  - A 'cracked trial' is a case where: a. The defendant pleads not guilty to one or more charges at the first hearing where they enter a plea, and: i. The case does not go to trial (due to guilty pleas or the prosecution offering no evidence); and ii. Either: - For any counts where the defendant pleaded guilty, they did not do so at the first hearing; or - For any counts that did not proceed, the prosecution did not declare their intention not to proceed before or at the first hearing. b. The case is listed for trial without a hearing where the defendant enters a plea.

## **Application to Your Case**

- The crucial factor is what happened at the first hearing where the defendant entered their pleas.
- If, at this first hearing, the defendant pleaded not guilty and the prosecution did not declare an intention not to proceed with those counts, and later offered no evidence, this fits the cracked trial criteria.
- If, at the first hearing, the prosecution needed time to consider the pleas and later accepted them, it might not be a cracked trial (based on R v Mohammed).

## **Additional Considerations**

- If no plea is ever entered and the case is listed for trial, it might qualify as a cracked trial.
- Simply setting a trial date and then later accepting first-time pleas does not make the case a cracked trial (based on R v Barzey).

**Q: Cracked trial scenario: If the trial date is set for Count 1 but on the first day of the trial, before the jury is sworn in, the CPS adds Count 2, to which a GP is entered, and the CPS offers no evidence on Count 1, is this still a cracked trial?**

**A:** Yes, if the matter gets to the first day of the trial, but before the trial starts the indictment is amended and a new count added, to which the defendant pleads, and no evidence is offered on the original count, this would be a cracked trial.

**Q: Can you advise how to maximise the page count?**

**A:** In relation to the AGFS fee scheme, pages of prosecution evidence (PPE) are not a main factor. However, they can be relevant for band 6 fraud offences and band 9 drugs offences to help confirm the offence band for the case. Please note the following advice:

### **1. Check criteria for Band 6 or 9 cases without PPE:**

- For band 9.1 cases involving class A drugs, check if the offence meets the criteria without considering PPE.
- For example, for a 9.1 case under “Importation S3 Misuse of Drugs Act/S170 Customs and Excise Management Act,” the criteria would be met.
- Similarly, the criteria can be met based on the weight of drugs, such as 5kg of heroin or cocaine.

### **2. PPE should be reasonable:**

- Do not focus on maximizing the page count of PPE. Instead, aim for a reasonable amount of PPE.
- Outside the offence bands noted above, PPE is not a main factor in the AGFS fee scheme but is important in the LGFS fee scheme for determining case complexity.

### **3. LAA report on PPE:**

- PPE includes witness statements, exhibits, transcripts, and streamlined forensic reports.
- Be aware that the LAA report may include non-evidentiary documents like index lists, cover sheets, or hyperlink pages, and there may be duplicated evidence.
- When submitting a claim, identify and note these non-evidentiary documents to avoid partial assessments.

#### **4. Electronic material considerations:**

- Electronic material can result in an unreasonable page count due to poor formatting or settings in programs like Excel.
- The determining officer will aim to authorise a reasonable amount of PPE, assessing each claim based on the case facts.

**Q: We often have trouble getting representation orders from the solicitors. This causes delays in our claims and results in a reduction of our fees. Is there any way to avoid this?**

**A:** You have the following options to deal with this issue:

- We do not require a hard copy of the representation order. If the solicitor does not provide a hard copy at instruction, ask them for the MAAT number and the date the representation was granted. Once we receive this information, we will find the representation order in our system.
- If you are having difficulty obtaining this information, and the case is likely to go out of time, email the AGFS team: [advocates-fee@justice.gov.uk](mailto:advocates-fee@justice.gov.uk):
  - Confirm the solicitor will not provide the representation order or MAAT details.
  - We can review the situation and potentially involve the firm's contract manager to help resolve the issue.

**Q: If additional exhibits and statements are served during the trial, so appear in the trial bundle section, can they still contribute to PPE?**

**A:** It is our understanding that served evidence should always be uploaded onto the DCS in the Statement or Exhibits section and not into the Trial section even if served mid trial. Though admittedly we have seen in the past served material in the trial bundle section, this should be the exception rather than the rule. However, if this does happen, we would encourage providers to ask the prosecution to upload the material into the appropriate sections.

If this does not solve the problem, then providers can include copies of the relevant documents with their claim along with submissions as to why it should be considered as PPE.

**Q: Can we always claim conference fees?**

**A:** For cases on indictment under the AGFS fee scheme, the first three conferences are included in the basic fee.

Further conferences are only payable under specific conditions, as stated in the Criminal Legal Aid (Remuneration) Regulations 2013, schedule 1, paragraph 19, if the determining officer is satisfied they are reasonable:

**1. Trials lasting 21-25 days:**

- One additional pre-trial conference or view, not exceeding two hours.
- Applies to cracked trials where the court accepted at the first hearing that the trial would last 21-25 days.

**2. Trials lasting 26-35 days:**

- Two additional pre-trial conferences or views, each not exceeding two hours.
- Applies to cracked trials where the court accepted at the first hearing that the trial would last 26-35 days.

**3. Trials lasting 36-40 days:**

- Three additional pre-trial conferences or views, each not exceeding two hours.
- Applies to cracked trials where the court accepted at the first hearing that the trial would last 36-40 days.

Note that payment is only allowed for pre-trial conferences. If a conference happens after conviction, no payment can be made for that conference, including travel expenses and travel time.

**Q: Do we need to be aware of any additional considerations for simple committal for sentence and appeals from magistrate's court cases?**

**A:** There are no specific additional considerations to be aware of. However, if you have any concerns over a specific case, please email us: [advocates-fee@justice.gov.uk](mailto:advocates-fee@justice.gov.uk)

**Q: Can you advise on the best way to handle claims that do not have a MAAT number, such as legal aid orders issued by the Court?**

**A:** For cases like a committal for breach where the Crown Court has granted representation, ensure the court gives you a hard copy of the representation order. Attach this to your case when you submit it.

**Q: Do we need to consider or provide anything further for breach of bail hearings?**

**A:** If a breach of bail hearing has occurred, we would ask that you confirm within the additional information section of CCCD, which hearing(s) claimed were for a breach of bail. Further to this if we could request an attendance note be provided for the hearing(s), including the following criteria within the note:

- The date of the hearing

- The name of the advocate attending the hearing
- Details of the alleged breaches (what was breached, how, etc)
- Details of the specific Crown Court case or cases (T number or URN and court) to which the hearing related

**Q: If the court clerk does not classify a case correctly, such as marking it as a trial instead of a cracked trial, can this be fixed and by whom? Can the clerk correct it when we point it out, and will the LAA accept this correction?**

**A:** The LAA will review court logs and compare them with regulations and cost judge decisions to determine the classification of a case.

For deciding if a case is a trial or a cracked trial, the court clerk's record is important, especially if the Judge orders that the trial has begun.

If this isn't recorded in the log, the clerk can later update the log or provide written confirmation of the Judge's order. The LAA will accept this. However, the confirmation should clearly state it is the Judge's order, not just the clerk's observations.



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