



Legal Aid  
Agency

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

# **Criminal cases unit: #HelpUsSayYes webinar: Your questions**

## **Court appointed claims for practitioners**

April 2025



# Contents

<b>Work covered by the appointment</b>	<b>3</b>
<b>Fee earners / hourly rates</b>	<b>5</b>
<b>Court hearings</b>	<b>6</b>
<b>Expert costs</b>	<b>7</b>
<b>Reviews</b>	<b>8</b>

## Work covered by the appointment

**Q: If a defendant has enough funds to cover representation up to the day of the trial but no further, how closely is their decision on the use of those funds scrutinised?**

**A:** An Order under s38(4) can only be made if the defendant is unrepresented. Once the defendant runs out of funds and becomes "unrepresented," the court can appoint someone. A s38 appointment cannot be used to cover any shortfall or reduce the defendant's liability for costs. Additionally, an appointee cannot act both under the appointment and under a private retainer with the defendant at the same time.

**Q: What is the scope of prep work for cross-examination? To what extent can claims be made, and can you provide examples?**

**A:** The work must be directly relevant to the cross-examination of the named witnesses.

For example, it may be reasonable for an appointed advocate to review photographs taken of a scene to determine if they can be used in cross-examination. However, it would generally not be considered reasonable for the advocate to visit the scene themselves.

**Q: I have seen clients before the court hearing and taken instructions, which is paid. Sometimes, in a complex case or with a difficult client, I type these instructions into a statement for checking to avoid complaints of professional misconduct. Sometimes this statement is paid for as reasonable, sometimes not. Is there guidance on when this is reasonable?**

**A:** Time will be allowed to create a document that outlines the defendant's responses to the prosecution evidence, if a simple note of the meeting is not enough. The content should only include matters that are directly relevant to the cross-examination of the named witnesses.

**Q: Does the same principle apply for defence statements submitted by a defendant or disclosure requests? Can you attend these hearings?**

**A:**

- **Defence case statements:** These are not mandatory in the magistrate's court, only in the Crown Court, and they are generally not part of your s38 appointment. They are part of the general preparation of the defence, which the defendant is ultimately responsible for. However, if a defence case statement (DCS) is submitted to force disclosure under Rule 15.5 of the Criminal Procedure Rules 2020, reasonable time will be allowed for drafting it.

- **Disclosure:** If there is a hearing to obtain disclosure of material that is essential for the cross-examination, and the assessor is satisfied that all other reasonable methods to obtain that information have been tried, then attending that hearing will be recoverable.

**Q: What should we do if the court insists that we complete the PET form? Should we tell the court that under Section 38, this is not allowed?**

**A:** Completing the PET form is not part of an appointee's responsibilities and is not recoverable.

## Fee earners / hourly rates

**Q: If there is a change of advocate under s36/38 due to a last-minute illness, to what extent will duplicate work be allowed?**

**A:** Each claim is evaluated individually. You will need to justify any additional costs on your claim form.

**Q: Can you give examples of when payment above the grade B rate is allowed?**

**A:** Each claim is evaluated individually. It may be reasonable for a grade A fee earner to handle a case if there are child or juvenile witnesses, if the defendant has a recognised mental health issue, or unusually, if the case requires a legal representative with specific expertise.

## Court hearings

**Q: If you stay at court beyond the Crown's close of the case at the court's request to assist with a matter or provide clarification requested by the judge or court, can you claim this extra time?**

**A:** The appointment ends when the cross-examination of the named witnesses is finished, unless the court decides otherwise -

*“if the lawyer is prepared to stay and assist the defendant on a pro bono basis, I see nothing in the Act and no logical reason why the court should oblige them to leave. The advocate may well prove beneficial to the efficient and fair resolution of the proceedings.” - CPS v Abas*

If an advocate stays after the cross-examination has finished, they may be able to claim this extra time, but they must provide a justification for it on their claim.

**Q: If a court directs the advocate to stay on a case beyond cross-examination, for example, to be on standby for witness recall, will this time be paid?**

**A:** The appointment usually ends at the conclusion of the prosecution case. However, if there is a reasonable expectation that a named witness will be recalled, the costs for the advocate to remain may be recoverable. You will need to provide justification on your claim form, as each claim is considered individually.

**Q: Can you attend bad character hearings if the person is named in the order, even though you cannot draft them?**

**Answer:** If a bad character application is made about a named witness, it is directly relevant to the cross-examination. Reasonable time will be allowed for drafting the application and attending any court hearings. However, bad character applications related to the defendant are not part of your s38 appointment.

**Q: What about waiting time on the day of trial?**

**A:** Reasonable waiting time can be claimed. In the magistrates' court, cases are usually scheduled for the morning, afternoon, or all day. You should keep a note of the times, such as when you arrived at court and when you were called into court.

**Q: What happens if I wait from 10am to 3pm and then the court runs out of time due to over listing?**

**A:** You can claim for the waiting time at court, but you should not include the lunch adjournment.

## Expert costs

**Q: What if a defendant instructs an expert as a witness? What can be claimed, especially if it's related to mental health and you need to speak to this person for cross-examination purposes?**

**A:** The defendant's state of mind is not directly relevant to the cross-examination. Expert evidence about the defendant's mental health is part of the general preparation of the defendant's case and not covered by the appointment.

**Q: Why aren't experts costs scrutinised the same way as costs for solicitors appointed under s38? Experts seem to set their own time and fees, and I've never seen the LAA challenge what they charge at legal aid rates. Isn't this unfair to s38 appointed solicitors, especially when a defendant is found not guilty or the Crown offers no evidence?**

**A:** The work that can be claimed by an appointee must be directly related to cross-examining the named witness. The appointee does not represent the defendant and is not instructed by them. Their role is limited to reasonable preparation for cross-examining the named witnesses on behalf of the court.

**Q: If the defendant needs an interpreter, can the costs for hiring an interpreter be claimed?**

**A:** Yes, if an interpreter is needed for the advocate to meet with the defendant and get their comments on the prosecution evidence, then the reasonable costs for the interpreter can be claimed.

# Reviews

**Q: Regarding reviews, I receive an email with a breakdown of what was paid but often not the actual claim to see what has been endorsed or reduced. Can you please ask the assessors to ensure they send the Excel claim forms back so we can respond properly?**

**A:** When a claim is not fully approved, assessors have been reminded to send a copy of the assessed claim to the claimant, especially when multiple reductions have been made.





© Crown copyright 2024

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit [nationalarchives.gov.uk/doc/open-government-licence/version/3](https://nationalarchives.gov.uk/doc/open-government-licence/version/3)

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

