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#HelpUsSayYes webinar: Court appointees

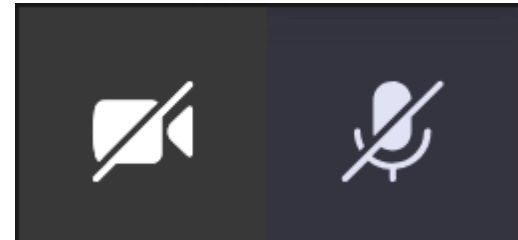
Criminal cases unit

April 2025

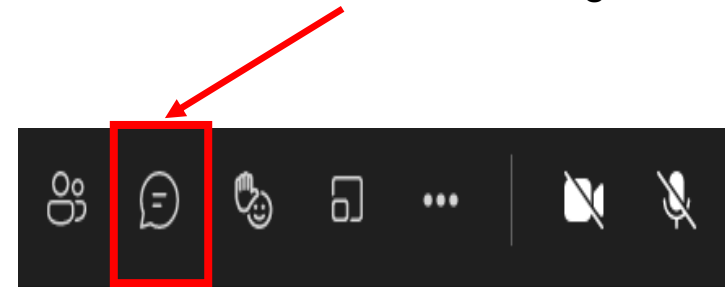
Technical tips for this webinar

1. Please remain on mute during the webinar
2. You can ask us questions throughout each section using the 'meeting chat'
3. You can keep the meeting chat throughout the event to view other questions
4. Email us if you experience technical issues during the webinar: LAAHelpUsSayYes@justice.gov.uk

Camera and audio off when icons appear like this:



Click here to view the meeting chat



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Getting your criminal application right first time

The purpose of this webinar is to provide you with information on the appointment, the reason the court makes an appointment and what work is recoverable.



By the end of the webinar, you will have an understanding of:

- Why an appointment is made
- How to claim your costs
- The regulations and guidance used
- What work is covered
- The 'review' process



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Appointment

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When an appointment is made

- Following a change to the Criminal Procedure Rules the magistrates' court can now appoint the solicitor who is present at the first hearing on a provisional basis:
 - This means the court does not have to wait for the defendant to appear having failed to get / apply for legal aid or retain a solicitor on a private basis.
- Prior to making an appointment the court should still invite the defendant to either apply for legal aid or instruct solicitors on a private basis.
- In practice, most appointments made at the first hearing where the defendant appears with a duty solicitor are maintained to trial.
- An appointment can be made where the defendant has approached a solicitor to represent them. However, as they are unable to pay privately for that representation, that solicitor asks to be appointed

The appointment

- Appointments are made under s38(4) of the Youth Justice and Criminal Evidence Act 1999
- The s38 Order should name an individual within the firm (s38(8)(b))
- An application for an appointment can be made by the prosecution or the court can make an appointment of its own volition

The appointment certificate

- A copy of the appointment certificate must be provided
- Only work undertaken on, or after, the date of the appointment can be recovered
- The appointed advocate's role is limited to undertaking the cross examination of the named witnesses on behalf of the court

Greater Manchester Magistrates' Court
Code 1720
Sitting at Manchester City Magistrates' Court

Case reference [REDACTED]

Appointment for Cross Examination

Date of appointment 20 December 2022

You have been appointed under section 38(4) of the Youth Justice and Criminal Evidence Act 1999 to undertake, on behalf of the Court, the cross-examination of the following witness(es) in these proceedings:

[REDACTED]

Please note that you have been instructed personally and, if you are no longer able to accept these instructions, you must notify the court so that an alternative appointment can be made.

Note

- Reasonable costs for preparation and advocacy will be met from central funds in accordance with regulations. Only preparation work for the cross-examination of the witnesses named will be covered.
- You are appointed by the court to cross-examine the witnesses mentioned only. You may not act for the accused without the consent of the court. If the court agrees to you acting for the accused, you may not recover those costs from the court, central funds or the accused.
- You should contact the accused to take instructions so that you can prepare for the cross-examination. The prosecutor should be able to provide you with details of the case.
- Any claim for costs must be submitted to the regional office of the National Taxing Team within three months. Claims sent to the court will be rejected.



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Recovery of costs

Central funds V legal aid

Two separate funds covered by separate regulations and guidance



Central Funds

- Costs / time claimed are assessed on a basis of “reasonableness”
- Any doubt is resolved in favour of the fund



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- A defendant has a choice of solicitors / counsel
- If a fee earner of a lower grade could do the work that rate is allowed
- Any doubt is resolved in favour of the claimant

The compensatory test

- As with all central funds determinations, costs are allowed that are considered to be:
 - *“reasonably sufficient to compensate the applicant for any expense incurred in the proceedings”.*

The compensatory test:

- Was the work and therefore the costs of that work, reasonably incurred?
 - Any doubt whether the costs have been reasonably incurred must be resolved in favour of the fund



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Regulations and guidance

Regulations

- **The Costs in Criminal Cases (General) Regulations 1986:**
 - Claims are determined under Part IIIA of the regulations
- **Regulation 7:**
 - Regulation 7 sets out the basis for determination

Guidance

Guidance is limited, due to majority of appointments are for work in the magistrate's court, with no provision for appeal to a Costs Judge:

- Paragraph 3.1 of the Taxing Officers' Notes for Guidance (TONG):
 - Sets out the approach to be taken on all determinations
- The Justices Clerks' Society (JSC) Guidance dated October 2007:
 - Provides guidance on the work which may be considered to fall within the scope of the appointment

In addition, there are two main decisions:-

- CPS v Abbas:
 - Refers to the JSC guidance and provides some additional clarification
- R v Andrews:
 - Clarifies the point at which an appointment concludes



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Making a claim for cost

The claim form

- Claims are submitted to CCU through a dedicated mailbox
- Claim forms are downloaded from our website:
 - [Court appointee: magistrates' court and crown court claims \(CA1\) - GOV.UK](#)
- You must download a fresh form for each claim

CA2025: Court Appointee Claim Form v.CA2025
 For claims where the court appointment has been made on or after 01/01/25 only
 Official
 FAO Criminal Cases Unit: courtappointee@justice.gov.uk
 Please use the above email address for any contact or queries in the first instance

The supporting attendance notes will be submitted by:

Provider name
 Billing DX address (postcode if not on DX)
 Address on order (if different to above)
 VAT claimed?
 VAT number (if appropriate)
 Key contact
 Contact email
 Contact telephone
 * Providers location (please choose from the drop down)
 * DUNS Number

Defendant name(s)
 Defendant address(es)
 Court
 Case number, URN (if Common Platform), or Libra number
 Your reference (20 character limit)
 * Date of appointment (please provide a copy of the order)

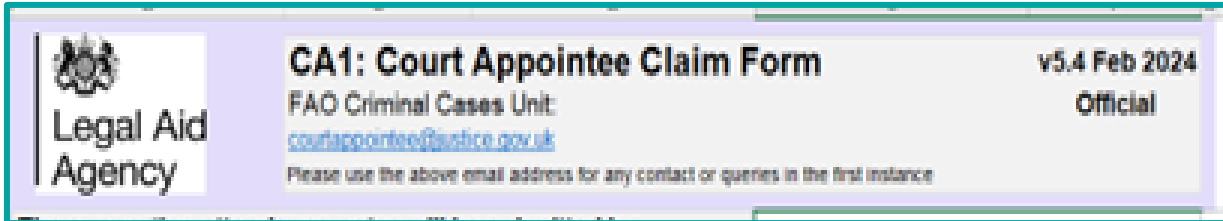
Summary of claim (this will populate automatically once sections marked * are completed)

	Hours/Items claimed	Net total
Preparation	0.00	£0.00
Advocacy	0.00	£0.00
Attendance at court	0.00	£0.00
Travel & waiting	0.00	£0.00
Routine	0	£0.00
Litigator profit costs claimed		£0.00
Disbursements		
liable to VAT		£0.00
not liable to VAT		£0.00
Advocates		
KC	£0.00	£0.00
Junior	£0.00	
Total net claim		£0.00
Total for VAT		£0.00
VAT claimed		£0.00

< > Claim Details Litigator Work Claimed Disbursements Advocate Work Claimed

Which claim form to use

The appropriate form based on the date of the appointment should be submitted:



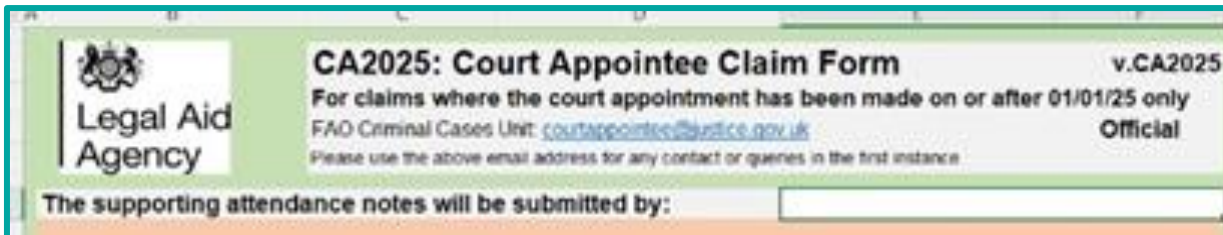
CA1: Court Appointee Claim Form v5.4 Feb 2024
 Legal Aid Agency
 FAO Criminal Cases Unit: courtappointee@justice.gov.uk
 Official
 Please use the above email address for any contact or queries in the first instance

Appointment prior to 1 January 2024



CA2024: Court Appointee Claim Form v.CA2024
 Legal Aid Agency
 For claims where the court appointment has been made on or after 01/01/24 only
 FAO Criminal Cases Unit: courtappointee@justice.gov.uk
 Official
 Please use the above email address for any contact or queries in the first instance
 The supporting attendance notes will be submitted by:

Appointment between 1 January 2024 and 31 December 2024



CA2025: Court Appointee Claim Form v.CA2025
 Legal Aid Agency
 For claims where the court appointment has been made on or after 01/01/25 only
 FAO Criminal Cases Unit: courtappointee@justice.gov.uk
 Official
 Please use the above email address for any contact or queries in the first instance
 The supporting attendance notes will be submitted by:

Appointment on or after 1 January 2025

Please note: You must download a fresh form for each claim

Hourly rates

- Costs are assessed using the Senior Court Costs Office maximum guideline hourly rates (GHR)
- These are guideline rates, as opposed to mandatory regulations, and were originally intended to assist judges dealing with the summary assessment of costs at the end of a civil hearing.
- The rates payable are dependent upon the location of the claimant or the court and the grade of fee earner who undertakes the work, not the work carried out

Enhancement

- The criteria for enhancement set out within the legal aid regulations are not applicable to the determination of the costs of a court appointee.
- The GHR applied to court appointee claims is considered to provide “*remuneration reasonably sufficient to compensate*”, especially when the limited role of the appointee is taken into account.

Fee earners

- The GHR scheme sets out a maximum hourly rate for fee earners based on their status or grade and their location.
- The grades of fee earner for central funds determination are defined as:-
 - Grade A: Senior solicitor, or fellow of CILEX, with an expectation of at least 8 years qualified experience
 - Grade B: Solicitors or legal executives (CILEX) over 4 years' qualified experience and costs lawyers who are suitably qualified
 - Grade C: Other qualified solicitors or legal executives and costs lawyers who are suitably qualified
 - Grade D: Trainee solicitors, paralegals or equivalent
- Unlike in legal aid assessment a fee earner cannot be considered as a grade B based on "equivalent experience". They must be a qualified solicitor or legal executive.



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Recoverable / non-recoverable work

Scope of an appointment

- A s38(4) appointment does not cover the general preparation of a defendant's case
- An appointee is not instructed by, nor do they represent the defendant
- A defendant remains unrepresented throughout the proceedings
- An appointee can act for a defendant with the permission of the court but only on a pro-bono basis
- Only work undertaken between the date of appointment and end of the prosecution case is recoverable

Common points in issue

- Grade of fee earner allowed
- Whilst the court order will name the advocate appointed that does not tie the assessor's hands on determination.
- The case must warrant preparation / conduct by a grade A fee earner for the costs to be “reasonably incurred”
- It is not considered reasonable for additional costs because a firm does not have a grade B fee earners available

Claims

Each claim will be considered on its merits.

- The assessor will consider several points when considering the appropriate grade to allow, including, but not limited to:
 - Type of offence
 - Number of witnesses to be crossed examined, including:
 - Their age
 - Specific needs / difficulties
 - If the case was unusually difficult or complex
 - If the case required a legal representative from a specialist field
 - If the defendant has specific mental health issues or difficulties
- If a grade A fee earner is claimed:
 - Must provide specific representations justifying that claim

Change of fee earner

- The additional costs brought about by a change of fee earner:
 - Not considered reasonable for the central fund to bear.
 - Reasonable time allowed for the preparation of a case to enable the cross examination of named witnesses
- Whilst not binding in respect of court appointee assessments, the criminal business assessment manual (CBAM) provides support for this position

Attendance at hearings other than for trial

The appointment does not cover attendance at most hearings other than when the case is listed for trial.

- Most hearings will generally be held in the absence of the named witnesses with no expectation evidence will be called or cross-examination take place.
- Including:
 - First / appointment hearing
 - Application for bail
 - Case management hearing / applications to vacate, pre-trial reviews
 - Special measures applications
 - Applications to adduce the defendant's bad character
 - This includes where the court has requested the appointee attend.

Disclosure and bad character applications (named witness)

- Attendance at applications related to disclosure may be allowed if the hearing is necessary to obtain vital material for cross-examination and other methods to obtain the disclosure have been ineffective
- Each claim will be considered on a case specific basis
- An appointee is not instructed by the defendant and does not represent them.
 - Defendant responsible for preparing and conducting their case
- The defendant to inform the appointee of information which may affect the cross-examination.

Defence witnesses / PET form / GDPR / Proof of evidence

Attendance on defence witnesses

- Whilst an appointee must ensure that they are in a position to properly conduct the cross examination, this does not necessitate their attendance on defence witnesses.

Completion / drafting of PET form

- Completion of the PET form is part of the general preparation of the defendant's case.

GDPR

- The duty of a firm of solicitors in relation to GDPR is separate and distinct to their s38 appointment.

Proof of evidence

- It may be reasonable to allow a period of time, following attendance on a defendant to put into note form the information provided to assist with cross examination.

Accuracy of interview / Preparation / Waiting time

Checking the accuracy of the defendant's interview

- Whilst it is reasonable for the appointee to consider the defendant's interview as part of the IDPC provided by the prosecution, any question as to the accuracy of that summary is part of the general preparation of the defendant's case and is not within the remit of a court appointee.

Preparation of a defence case statement

- Provision of a defence case statement is not mandatory for cases heard in the magistrate's court.

Waiting over the luncheon adjournment

- This should not be included in waiting time claimed.

Waiting for CVP / video link

- Where an appointee attends a defendant in custody or the court by way of a CVP / video link other than a very short period, waiting time is not recoverable.

Non-fee earner work

Administrative or non-fee earner work is not recoverable. The test is what work is being done, and not who is doing it.

This includes but is not limited to:

- File opening
- Downloading / uploading documents
- Printing / scanning /photocopying
- Transcribing
- Maintaining an internal diary
- Administrative telephone calls

Routine sent / received

Emails / letters sent:

- Whether an email or letter is routine or can reasonably be claimed as a timed attendance is based on content.
- Emails / letters should only be allowed where the content is directly relevant to the cross examination and will not include:
 - Client care letters
 - Letters to the defendant
 - Incessant chasing for a response
 - Long exchange by email which could have been one telephone call
 - End of case letter to the defendant

Emails / letters received:

- Are not remunerated on a separate basis

Telephone calls:

- Routine telephone call is based on content, not length.
- Only calls directly relevant to cross examination are recoverable.
- Telephone call is unanswered and a message left - not recoverable

Rates allowed

- They are remunerated at 1/10th of the applicable GHR allowed for preparation.
- All routine items are allowed at the applicable rate for the grade of fee earner that has been allowed for preparation unless claimed at a lower rate
- This takes into account the time that would be needed to instruct a junior to write / send an email or make a specific call

Appointment of non-local solicitors

- The choice of the appointed advocate is a matter for the court.
- The court will appoint the solicitor who either attends the first appearance or who requests to be appointed.
- The solicitor does not have to accept that appointment
- The making of an appointment does not remove or reduce the duty of the assessor to consider the reasonableness of each aspect of the claim
- Where a solicitor who is not local to the court incurs additional unreasonable travel costs those costs fail the statutory test and will be reduced on assessment



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Reviews

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Review

- There is no provision in the regulations for the redetermination of costs from central funds incurred in the Magistrates court.
- The CCU will, on request, undertake an informal review of the assessment.
- The claimant may provide additional supporting documentation and / or representations that will be taken into account.
- A review will be undertaken and the claimant notified of the result within 20 days of the receipt of the request.
- Once that review has been carried out, it follows that the regulations do not include any provision for further appeal by way of written reasons or Appeal to a Costs Judge.



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Contact us

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Contact us / our training website

Customer Services Team

- Tel: 0300 200 2020 (Mon-Fri, 9.00-5.00)

Online Support Webchat

- Use Webchat for help with IT system issues: Online-Support@justice.gov.uk

Webinar Recordings

- Our 'Help Us Say Yes' webinars focus on areas where there have been issues or high enquiry levels
- Popular sessions are posted on the training website: [Ministry of Justice](#) and the LAA YouTube channel: [Legal Aid Agency youtube channel](#)
- Remember to like and subscribe!

Our communications channels

Legal Aid Bulletin

- A fortnightly e-alert with links to relevant pages
- Join our thousands of subscribers: [Sign-up to LAA Bulletin >>](#)



Social Media

- Follow us on X: [@LegalAidAgency](#)
- Get help from our customer service account: [@LAAHelpTeam](#)
- Read our blog





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gov.uk/government/organisations/legal-aid-agency

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