

SCHEDULE 1

FEES OF COUNSEL

Appeals in the High Court of Justiciary

“4. In a hearing as specified in paragraph 1(c) or 2(b) of Chapter 1 or 2 of Part II of the Table of Fees which is set down for half a day or longer or where the appellant has been sentenced to a period of imprisonment of 10 years or more, to life imprisonment or where an order for lifelong restriction has been made, the fee payable shall be that in the range specified in paragraph 3(d) of Chapter 1 or 2 of Part II respectively.

5. Subject to paragraphs 9 to 11B below, the fees including those within a range of fees, as prescribed in Part II of the Table of Fees, shall include all preparation.

6. Where counsel is seeking a higher fee within the range under paragraph 3(d), 6(a), (b) or (c) (hearings) of Chapter 1 or 2 of Part II he or she will need to justify this by establishing that due to the nature of the case an unusually high level of preparation was required or that any of the factors below exist and that they have had a significant effect on the conduct of the case:—

- (a) novelty of the issues of law;
- (b) unusually complex issues of fact;
- (c) issues of considerable legal significance.

7. Where the Auditor determines the appropriate fee he or she shall specify which of the factors in paragraph 6 justify such a fee and the extent to which each of those factors contribute to that fee.

8. Where counsel is seeking a higher fee within the range under paragraph 2(a), 3(a), (b), (e) or 6(d) (written work) of Chapter 1 or 2 of Part II he or she will need to justify this by reference to either or both of the following factors:—

- (a) the content rather than the length of the document; and
- (b) the amount of documentation necessarily referred to.

9. Where a hearing has been fixed in an appeal under paragraph 3, 4 or 6 of Chapter 1 or 2 of Part II of the Table of Fees counsel may claim an additional fee for preparation for the hearing only where:—

- (a) it is set down for a day or more and counsel has spent more than 2 hours per day on preparation; or
- (b) the case is abnormal in magnitude, or difficulty, or in any other material respect.

10. Where an additional fee for preparation is claimed counsel must provide the Board with details of the nature of the preparation including:—

- (a) where a higher fee has been claimed or received within a range of fees, identification of the part or parts of that fee which relate to those factors mentioned in subparagraphs (a) to (c) of paragraph 6 above or to the factor of an unusually high level of preparation;
- (b) records providing a detailed summary of the nature of the work or, if applicable, the nature of the documentation perused at each stage of the process, the time taken and when and where the work was undertaken and the details of authorities referred to in the course of preparation; and
- (c) any contemporaneous record or notes made in the course of preparation.

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11. Except on cause shown, an additional fee for preparation shall only be allowable once to both junior and senior counsel notwithstanding that the assisted person may be represented by more than one junior or senior counsel or both during the course of the case.

11A. In assessing the amount of time for which an additional fee for preparation is payable the Board, or the Auditor as the case may be, will consider the amount of time that is reasonable having regard to the following factors:—

- (a) the facts and circumstances of the case; and
- (b) the extent to which payment for preparation is already covered by the prescribed fee or the fee deemed appropriate within the range of fees, taking into account that in cases set down for a day or more 2 hours preparation is covered by that fee by virtue of paragraph 9(a).

11B. The additional fee shall be calculated by dividing the time allowed for additional preparation in terms of paragraph 11A above into units of 6 hours, each unit payable at the rate of two thirds of the prescribed fee or the fee deemed appropriate within the range of fees in Chapter 1 or 2 of Part II of the Table of Fees.”