

Payment for hearings in the Magistrates' Court relating to breach of bail for Defendants bailed by the Crown Court.

Issue

- 1 Where defendants who breach Crown Court bail are brought before the magistrates, solicitors without higher rights of audience who attend may be refused payment.

The regulatory position

- 2 Payment in these circumstances is governed by the Criminal Legal Aid Remuneration Regulations 2013 (the "Remuneration Regulations")
- 3 Where a Defendant is on bail in proceedings before the Crown Court, any hearing relating to breach of that bail is payable as a standard appearance fee (SAF). Paragraph 1 (1) of Schedule 1 sets out that a SAF is payable for

.....an appearance by a trial advocate or a substitute advocate in any of the following hearings.....[including].....

(j) a hearing, whether contested or not, relating to breach of bail

- 4 "Advocate" is defined by Regulation 2 as

.....a barrister, a solicitor advocate or a solicitor who is exercising their automatic rights of audience in the Crown Court [emphasis added for the purpose of this note.]

The procedural position

- 5 Defendants on conditional bail to the Crown Court, and allegedly in breach of that bail, are brought in the first instance before the Magistrates' court. This may be following arrest, or as a result of the Defendant's surrender. It is overwhelmingly likely that representation, where provided, will be by a solicitor, often at short notice.
- 6 Breach of bail conditions is not a separate offence, although it may result in a variation of conditions or withdrawal of bail. Regardless of actual venue, hearings in relation to breaches are notionally considered to be part of proceedings in the Crown Court.

Previous payment position

- 7 To be eligible for a SAF, a claimant must be an "advocate", as set out above. It has been argued that only a solicitor with higher rights of audience, or counsel, has "automatic rights of audience in the Crown Court" and so fits that definition. Because breach of bail hearings in the Magistrates' court remain notionally in the Crown Court, non-higher rights advocates have been refused payment for conducting these hearings.

Revised payment position

- 8 We have considered the position and agree that it is possible to read Regulation 2 (i.e. the definition of "advocate") in a purposive and broad way in order to capture solicitors without

higher rights of audience who attend bail hearings in the Magistrate's court (following a defendant's breach of Crown Court bail) such that they are able to receive payment for that work under the SAF.

9. We consider that it is possible to read the words "automatic rights of audience in the Crown Court" to mean, in essence, "where a solicitor is able to address the Crown Court without leave". Rights of audience for solicitors in the Crown Court are not wholly restricted to higher court advocates. Historically, solicitors without higher rights have been eligible to advocate in the Crown Court on a limited basis, such as in appeals against conviction and committals for sentence. Where they have conducted these proceedings, they have been eligible to claim payment and are entitled to conduct advocacy without seeking leave of court.