

## FEES BULLETIN No. 1 of 2013

### GRADUATED FEE SCHEME C

This document is intended to assist with the payment of the more complex fee scenarios in Graduated Fee Scheme C.

#### 1. The definition of a 'case' in the Graduated Fee Scheme

The definition of a case is set out in paragraphs 27-30 of the Manual of Guidance (MoG) as follows:

##### Definition of a 'Case'

74. A 'case' is one or more counts on a single indictment. Each indictment is a separate case regardless of the number of counts or the number of defendants. If two or more indictments are joined, there will then be one case, conversely, if one indictment is severed, there will then be two or more cases.

75. A Bail Act Offence arising out of an execution of a bench warrant in the Crown Court is not a 'case' and the Bail Act Offence can not attract a main hearing fee.

76. In appeals against conviction or sentence, a 'case' is a single notice of appeal arising out of proceedings in the Magistrates' Court on a single day.

77. In committals for sentence, a 'case' is a single memorandum of conviction arising out of proceedings in the Magistrates' Court on a single day.

#### 2. More than one case with main hearings at the same time

Fees clerks must be alert to the fact that on some occasions a defendant will have more than one case dealt with at a hearing. There are laid down procedures which must be applied if this happens.

Firstly there is a requirement for the Paralegal Officer (PO) or Paralegal Assistant (PA) to alert the fees clerk to the fact that there are linked cases by completing the linked cases box on the Crown Court Hearing record sheet (CCHRS) or Fees Folder (FF).

**Linked cases (list names or URN)**

The PO/PA should also annotate the contemporaneous hearing record section with the fact that more than one case was dealt with on the same date.

If there is more than one main hearing dealt with at a hearing then the advocate must elect one of the cases as the **principal case** upon which the full main hearing fee will be paid. It will be necessary on these occasions for the fees clerk to contact chambers to ascertain which case chambers intend to elect as the principal case before that case is entered onto PARITY and the purchase order is sent. The additional cases will be paid as case uplifts. Case uplifts are paid at 10% of the base fee of the principal case. This amount is calculated by entering the number of cases dealt with at the main hearing onto PARITY in the number of cases box.

##### Example 1

Two records (two cases for the same defendant):

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#### **Case 1 – URN 0123456**

1/10/12 - case listed for PCMH, Burglary, offence category E, 25 pages, Guilty plea, Case type 5 (linked to 7891011 and dealt with at the same time)

#### **Case 2 – URN -7891011**

1/10/12 - case listed for PCMH, Rape, offence category J, 345 pages, Guilty plea, case type 5 (linked to 0123456 and dealt with at the same time)

There are two main hearings heard on 1/10/12. The fees clerk is alerted to the fact that there are two cases dealt with at the same time from the hearing endorsement and the completion of the linked cases box and should follow the procedure as outlined above. In this scenario it is likely that the advocate would elect the rape case as the principle case, as offence category J remunerates at a higher level than offence class E but the fees clerk should check the position with chambers.

This principle applies to all types of main hearing including 'main hearings' in committals for sentence cases and appeals.

This principle also applies where there are two different main hearing types on the same day. If a defendant has two different types of main hearing at the same hearing, the advocate must elect the **principal case** and receive case uplifts for any additional case dealt with at the same time:

#### Example 2

##### **Case 1 – URN 246801**

1/10/12 – case listed for PCMH – NG plea, adj for trial = BPD

31/10/12 – case listed for plea. Defendant changes his plea to guilty. Case type 8, listed with case 13579

##### **Case 2 - URN 13579**

31/10/12 – case listed for PCMH, G plea, Case type 5, listed with case 246801

In this scenario, the 31/10/12 is the main hearing date, there are two cases dealt with as main hearings. The first case is a cracked trial, and the second case is a guilty plea. The advocate must elect one of the cases as the **principal case** and a case uplift will be paid for the second case.

The fees clerk should annotate the CCHRS or FF to show the hearing that counsel has elected and which has been paid as the principal case.

The principle also applies where there is a main hearing on a case on indictment and a 'main hearing' on a committal for sentence (or appeal which is less likely)

#### Example 3

##### **Case 1 – URN 35790**

31/10/12 – case listed for PCMH – G plea and sentence. Case type 5, listed with case 24567

##### **Case 2 - URN 24567**

31/10/12 – committal for sentence, case opened and sentenced. Fee code CSE listed with case 35790

In this scenario, the 31/10/12 is the main hearing date and there are two cases dealt with as main hearings. The first case is a guilty plea on indictment and the second case is a committal for sentence. The advocate must elect one of the cases as the **principal case** and a case uplift will be paid for the second case.

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In this scenario it is likely that the advocate will elect the guilty plea as the principal case and receive a case uplift for the committal for sentence. **Fees clerks must be very careful in these circumstances not to pay both a guilty plea fee and a full committal for sentence fee.**

#### **3. More than one defendant at a main hearing**

For cases on indictment, committals for sentence and appeals, the advocate is entitled to a defendant uplift of 5% of the base fee for each additional defendant who has a main hearing at the same time on the principal case (see section 4 below).

Fees clerks should enter the number of defendants who have a main hearing at the same time (on the principal case) in the relevant box on PARITY.

In cases with more than one defendant, fees clerks will need to be absolutely sure how many defendants were dealt with at each main hearing to ensure that the correct payment is made. The CCHRS or FF should contain this information but if it does not, enquiries will need to be made with the author of the document or other sources.

#### **4. More than one defendant or more than one case dealt with at the same time.**

The most complex of scenarios can be those where more than one defendant and more than one case is dealt with at the same hearing. In these circumstances it is imperative that the fees clerk checks for linked cases and reviews the contemporaneous hearing endorsements to ascertain how many defendants, or cases, or both, have been dealt with at a single main hearing.

In these circumstances, the advocate has to elect the principal case upon which s/he receives a full main hearing fee. The advocate will be paid defendant uplifts for each additional defendant having a main hearing on the principal case only. The advocate will receive case uplifts for any additional cases (but no defendant uplifts) dealt with as main hearings at the same time.

There is a further principle of the GFS that if more than one main hearing type occurs at the same time then the advocate must elect one of those main hearing types as the principal case.

#### Example 4

Defendants A, B, C, D and E are listed together for PCMH.  
There are two separate cases.

**Case 1**, defendant A and B are charged with armed robbery.

**Case 2**, defendants A, B, C, D and E are charged with burglary.

At the PCMH all defendants plead guilty to the offences they face and are sentenced.

There are two main hearings on two cases heard together so the advocate must elect one of the cases as the principal case.

If the advocate elects case 1 as the principal case, he will be paid a guilty plea main hearing fee (offence class B) for two defendants (defendants A & B) and a case uplift (but no defendant uplifts) for case 2.

If the advocate elects case 2 as the principal case, he will be paid a guilty plea main hearing fee (offence class E) for five defendants (defendants A, B, C, D and E) and a case uplift (but no defendant uplifts) for case 1.

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It will be necessary on these occasions for the fees clerk to contact chambers to ascertain which case they intend to elect as the principal case before the information is entered onto PARITY and the purchase order is sent.

#### Example 5

Defendants A, B, and C are listed together for PCMH. There are two separate cases.

**Case 1**, defendants A and B are charged with burglary

**Case 2**, defendants A, B & C are charged with theft of metal worth £20,000

At the PCMH defendant B pleads guilty to both indictments Defendants A & C plead not guilty to their indictments and their cases are adjourned for trial.

In this scenario, there are still main hearings on two separate cases at the same hearing, as defendant B has pleaded guilty to the burglary case and also to the theft case.

The advocate must elect one of the cases as the principal case. The number of cases entered in to parity will be 2 and a case uplift will be paid for the additional case heard at the same time (no defendant uplifts apply).

In this scenario, there is also a fixed fee to pay, as the PCMH fee is due for the two defendants who were the subject of an effective PCMH.

The fees clerk should annotate the CCHRS or finance log with the hearing that the advocate has elected as the principal case.

#### **5. Mixed pleas, multiple main hearings, concurrent and consecutive hearings**

As stated above it is a principle of the GFS that, if more than one case is heard at the same time and main hearings result, the advocate must elect a principal case upon which the graduated main hearing fee will be paid. Any unelected cases will be paid as case uplifts

The effective trial main hearing fee remunerates the advocate for a two day period. The 'elected' cracked trial main hearing fee also covers a two day period. The guilty plea main hearing fee only covers one day.

As both effective trial fees and 'elected' cracked trial fees now effectively include a payment for a second day, no additional payment will be made for a main hearing in a linked case or a main hearing for a linked defendant that is heard within the currency of a main hearing period. This applies to other main hearings and also to fixed fees.

If there is more than one main hearing during the same two day period, the advocate must elect one of the main hearings as the principal case. By way of example:

#### Example 6

A case with two defendants is listed for trial. On day one, one of the defendants pleads guilty (cracked trial). The following day, the jury is sworn for the second defendant and evidence is subsequently called. The trial lasts for two days. In this scenario, there are two main hearings (a cracked trial and an effective trial). The main hearing date for the effective trial falls within the two day period covered by the cracked trial main hearing fee and therefore there are two main hearings happening at the same time. The advocate must therefore elect to be paid one main hearing fee for either a cracked trial with two defendants or a two day trial with two defendants.

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The CCHRS or FF should look like this:

Date	Judge & Court	Name of Counsel / CA	Chambers	Description of Hearing		Main Hearing Type / Fixed Fee Code
				Listed for	Hearing Outcome	
22/10/12	Evans Leeds CC	Crowson	ABC, Leeds	Trial	Case called on at 4:15 Defendant 1 – indictment put again - PG adj for sentence Defendant 2 adj to tomorrow	8
23/10/12	Evans Leeds CC	Crowson	ABC, Leeds	Trial	Defendant 2 for trial Jury sworn & ev called Adj part heard	6
24/10/12	Evans Leeds CC	Crowson	ABC, Leeds	Trial	Trial contd. Jury out 12:05. Jury back 12:55. Verdict – guilty. Adj for sentence to tie in with defendant 1	Day 2 of trial

If the advocate, as is likely, elects the effective trial, the main hearing date will be 23/10/12 as this is the date the jury was sworn. That leaves an issue as to what to pay for 22/10/12. In such a scenario, an FNR fixed fee will be paid for the first day (22/10/12 in this scenario). **Full details can be found in Fees Bulletin number 2 of 2012.**

Example 7

A case with two defendants is listed for trial. On day one, one of the defendants pleads guilty (cracked trial). On the same day, the jury is sworn for the second defendant and the trial lasts three days. In this scenario, there are two different main hearing types happening on the same day (a cracked trial and an effective trial).

The CCHRS or FF should look like this:

Date	Judge & Court	Name of Counsel / CA	Chambers	Description of Hearing		Main Hearing Type / Fixed Fee Code
				Listed for	Hearing Outcome	
22/10/12	Evans Leeds CC	Crowson	ABC, Leeds	Trial	Defendant A asks for the indictment to be put again – PG and adj for sentence 3:25 Jury sworn for defendant B Adj part heard	8 and 6
23/10/12	Evans Leeds CC	Crowson	ABC, Leeds	Trial	Evidence called. Adj part-heard	Day 2 of trial
24/10/12	Evans Leeds CC	Crowson	ABC, Leeds	Trial	Trial contd. Jury out 12:05. Jury back 12:55. Verdict – guilty. Adj for sentence to tie in with defendant A	Day 3 of trial

The advocate must therefore elect to be paid either a cracked trial main hearing fee with two defendants or a three day effective trial main hearing fee with two defendants.

The fees clerk should annotate the CCHRS or finance log with the hearing that the advocate has elected as the principal case and delete the unelected hearing code.

Example 8

A case with two defendants is listed for trial. On day one, defendant A pleads guilty (cracked trial). The following day, the prosecution offers no evidence in relation to defendant B (cracked trial). In

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this scenario, there are two main hearings (cracked trials). The main hearing date for the second cracked trial falls within the two day period covered by the first cracked trial main hearing fee.

The CCHRS or FF should look like this:

Date	Judge & Court	Name of Counsel / CA	Chambers	Description of Hearing		Main Hearing Type / Fixed Fee Code
				Listed for	Hearing Outcome	
22/10/12	Evans Leeds CC	Crowson	ABC, Leeds	Trial	Defendant A asks for the indictment to be put again – PG and adj for sentence Case in relation to defendant B adj until tomorrow.	8
23/10/12	Evans Leeds CC	Crowson	ABC, Leeds	Trial	Decsion made to ONE in relation to defendant B – NG verdict.	8

The fees clerk should contact chambers.

If the advocate elects to be paid the crack on the 22/10/12 as the principle case then that 'elected' cracked trial main hearing fee covers a two day period and no fee should be paid for 23/10/12.

If however the advocate elects the crack on the 23/10/12 as the principle case (an elected cracked trial main hearing fee) then 22/10/12 should be remunerated as an 'unelected' cracked trial fee and a daily fee paid.

#### Example 9

A case is listed for trial with two defendants (defendants A and B) and the trial runs for five days. Both defendants are convicted and on the last day of the trial a new indictment (a 'case') is put to defendant A and he pleads guilty. As the main hearing in an effective trial lasts its entire length, there are two main hearings in two cases happening at the same time (an effective trial and a guilty plea) and the case uplift provisions therefore apply.

In this scenario, the advocate must elect to be paid either a five day effective trial main hearing fee for two defendants or a guilty plea main hearing fee for one defendant. A case uplift will be paid for the unelected case.

Alternatively, if a case with two defendants (defendants A and B) is listed for trial and defendant A pleads guilty on day one (cracked trial) and the jury in relation to the trial of defendant B is not sworn until two days later (and that trial is subsequently effective), there will not be two main hearings taking place during the same period. The advocate will be paid a cracked trial main hearing fee for defendant A and an effective trial main hearing fee for defendant B.

#### Example 10

If a fixed fee hearing takes place during the period covered by a main hearing fee, then the fixed fee would not ordinarily be paid. This principle also applies where the main hearing fee covers a two day period.

For example, a case cracks on day one, and is adjourned for sentence to the following day. In this scenario, if the cracked trial fee is an 'elected' cracked trial, the fee covers day one and day two, so the sentence fee would not be paid in addition to the main hearing fee.

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As stated earlier in this guidance, this principle does not apply where there is an effective PCMH for a defendant at the same time as a main hearing for another defendant in the same or a linked case (see example 5).

In all of these scenarios it is imperative that the fees clerk indicates which main hearing the advocate has elected as the principal case and which hearing outcome code is being paid.

#### **6. Cracked trials**

Fees Clerks are reminded of the multiple cracked trial provisions which are set out at paragraph 110 of the MoG:

Where there is more than one cracked trial main hearing concerning any number of defendants on any number of indictments arising out of a single core bundle of evidence, the cracked trial main hearing fee will only be paid on one occasion. Accordingly, the advocate should elect which cracked trial main hearing event will attract the cracked trial main hearing fee. All other cracked trial events will be remunerated by way of the daily fee (see annex 3). An uplift is payable for each additional defendant (see paragraphs 96-101). This provision also applies where a retrial results in a cracked trial hearing.

Fees Clerks should contact chambers to ascertain which cracked trial event will be remunerated by way of a full cracked trial main hearing fee. Where more than one chambers has been instructed in the process, chambers must agree between themselves which cracked trial event will become the 'elected' cracked trial and inform the fees clerk accordingly.

#### **7. Effective trials**

For the purposes of the GFS, a hearing is only deemed to be an 'effective' trial when the jury has been sworn and evidence called or read before the jury. If the trial is 'effective', the start of the trial (ie the main hearing date) is the date the jury was sworn.

If an effective trial main hearing fee is to be paid, the fees clerk will need to ensure that the fees log clearly indicates the date the jury was sworn and whether evidence was called or read before the jury. If it does not, the matter must be referred to the Casework Manager for that detail to be added to the record.

Paying effective trials:

By way of example, if a jury is sworn on 1<sup>st</sup> October 2012, counsel opens the case and calls evidence, the criteria for paying an effective trial main hearing fee are met. The jury was sworn on 1<sup>st</sup> October 2012 so that is the main hearing date and the start of the trial.

If a jury is sworn on 1<sup>st</sup> October 2012, then there are several days of legal argument, followed by the calling of evidence, the criteria for an effective trial are met, even though evidence was not called for several days. The main hearing date is still the date the jury were sworn ie 1<sup>st</sup> October 2012 and the days of legal argument will form part of the length of the trial.

If there are any days that the court does not sit after the jury are sworn these days do not count towards the length of the trial.

The advocate is not paid a daily fee for any days s/he is not present at the trial.

#### Example 11

10/1/13 Listed for trial, jury sworn – adjourned to 11/1/13

11/1/13 counsel opens case then jury discharged, no evidence called.

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No evidence has been called so this is not an effective trial. The correct payment would be FNR on both days.

#### Example 12

10/1/13 Listed for trial, jury sworn – adjourned to 11/1/13

11/1/13, counsel opens the case then defendant changes his plea to guilty.

No evidence has been called so this is not an effective trial. The correct payment would be FNR on day 1 and a cracked trial main hearing fee on day 2.

#### Example 13

10/1/13 Listed for trial, jury sworn, - adjourned to 11/1/13

11/1/13 counsel opens the case and a witness gives evidence. The defendant then changes his plea to guilty

This is an effective trial as the criteria has been met. Once a trial has started (a jury has been sworn and evidence has been called or read) then it will be paid as a trial even if the defendant changes his plea to guilty or the Prosecution offers no evidence.

#### Example 14

1/10/12 Listed for trial and jury sworn. Adjourned to 2/10/12

2/10/12 the defendant changes his plea to guilty.

In this scenario, the case is not an effective trial, as evidence is never called. The outcome of this case is a cracked trial main hearing which occurs on 2/10/12. The advocate will be remunerated for 1/10/12 with a fixed fee FNR.

Other factors to consider when paying effective trials are as follows:

The number of days a trial lasts - the CCHRS or FF log should clearly indicate all sitting days of a trial. Non-sitting days should be clearly indicated as they do not qualify for payment.

The name of counsel who attends each day of the trial - this is particularly important in two counsel cases. It must be abundantly clear from the endorsements which advocates physically attended each day of the trial. If one of the advocates is not present at the trial in a two counsel case, the absent advocate will not receive a fee for that day. If this information is not clear on the record, the matter must be referred back to the casework manager for that information to be added.

#### Stand-in counsel

Fees Clerks are reminded that if there is a stand-in advocate in an effective trial, the effective trial main hearing fee and the daily fees must all be paid to the trial advocate and chambers will reimburse the stand-in.

### **8. Newton Hearings**

There are occasions where a defendant will plead guilty to an offence, but on a basis that requires the judge to hold a hearing that deals with the disputed part of the evidence; these are Newton hearings.

In cases where there is an 'effective' Newton Hearing the proceedings are paid under the GFS as an effective trial main hearing. The main hearing date is the date the defendant entered the guilty plea (either a guilty plea hearing or a cracked trial hearing) and the length of the 'trial' is deemed to be the combined length of the main hearing and the effective Newton hearing.

For a Newton Hearing to be 'effective' evidence must be called or read in relation to the 'issue' being tried.

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Example 15

On 8/10/12 a defendant is listed for PCMH on an indictment containing one count of AOABH. He pleads guilty to the offence but says that, contrary to the prosecution evidence that he kicked the victim in the head on the ground, he only punched him once in the face. The Judge adjourns the case for a Newton Hearing.

On 22/10/12 the case is listed for a Newton Hearing, evidence is called, the Judge decides that he is satisfied that the defendant did kick the victim in the head and sentences him, the same day, to 18 months imprisonment.

The CCHRS or FF should look like this:

Date	Judge & Court	Name of Counsel / CA	Chambers	Description of Hearing		Main Hearing Type / Fixed Fee Code
				Listed for	Hearing Outcome	
8/10/12	Roberts @ Birmingham	Smith	Piccadilly	PCMH	Indictment put AOABH – PG Basis of plea = defendant did not kick complainant whilst on the ground – not accepted by the Crown. Judge adjourned case to 22/10/12 for Newton Hearing. Complainant and OIC to attend	5  6
22/10/12	Roberts @ Birmingham	Smith	Piccadilly	Newton Hearing	Newton Hearing effective. Evidence called from complainant and OIC. Defendant gives evidence. Judge satisfied complainant kicked on ground.  Sentence 18 months imprisonment	Day 2 of trial (Newton Hearing)

As the outcome of the hearing on 8/10/12 was a guilty plea, the record has been correctly endorsed on that date with code 5. Because the Newton Hearing on 22/10/12 was effective, the record for 8/10/12 has been correctly amended to show code 6 with 22/10/12 correctly shown as the second day of the 'trial'. In this scenario, a two day effective trial fee should be paid.

The same applies with a Cracked trial in which there is a subsequent Newton Hearing:

Example 16

Date	Judge & Court	Name of Counsel / CA	Chambers	Description of Hearing		Main Hearing Type / Fixed Fee Code
				Listed for	Hearing Outcome	
8/10/12	Goss @ Cardiff	Smith	Piccadilly	PCMH	Indictment put S20 – PNG Adj for trial to 22/11/12 RIC	<b>BPD</b>
22/11/12	Jones @ Cardiff	Smith	Piccadilly	Trial	Indictment put again – PG Basis of plea (did not kick complainant on ground) not acceptable. Adj to Newton Hearing on 9/1/13 RIC	8  6
9/1/13	Jones @ Cardiff	Major	Piccadilly	Newton Hearing	Complainant & defendant give evidence. Judge finds complainant was not kicked on ground and sentences to 4 months imp.	Day 2 of trial (Newton Hearing)

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As the outcome of the hearing on 22/11/12 was a cracked trial, the record has been correctly endorsed on that date with code 8. Because the Newton Hearing on 9/1/13 was effective, the record for 22/11/12 has been correctly amended to show code 6 with 9/1/13 correctly shown as the second day of the 'trial'. In this scenario, a two day effective trial fee should be paid (plus a BPD).

As the GFS is outcome led, if the Newton Hearing is not effective then the case reverts to its original outcome, which would be a guilty plea main hearing or a cracked trial main hearing.

#### Newton Hearings in Committal for Sentence cases

It is possible to have a Newton hearing on a committal for sentence but such cases are not paid as effective trial main hearing fees. The advocate is paid a CSE fee for the Newton Hearing itself. The advocate can then apply for an additional hourly rate fee to be paid for the preparation done in the case. Any application for preparation must be supported by detailed work records. The PO/PA should have endorsed the record sheet to show that there was a Newton Hearing.

In such cases the hourly rate payment is likely to be notified to the fees clerk through the troubleshooting process as, when the case is due for payment, the fees clerk is unlikely to have the work records from the advocate. Any such application must be referred to the casework manager for authorisation prior to payment and the CCHRS or FF must be endorsed accordingly.

#### **9. Fixed Fees**

Fixed Fees are payable for Appeals against conviction and sentence, committals for sentence, appeals against sentence, confiscation hearings, bail applications, PCMHs, sentences and interim hearings other than the main hearing.

The basic principle of fixed fees are that they are generally not paid at the same time as a main hearing, and only one fixed fee is payable for a hearing.

For example, if a defendant has two or more cases listed for mention, then only one mention fee (OHA) will be paid. In circumstances where cases are listed for different reasons at the same hearing, only the principal fixed fee will be paid. If a defendant has a case listed for sentence and another matter listed for mention and that defendant is sentenced at the hearing, only the SHR fee would be paid. Counsel would not receive a mention fee (OHA) for the second case.

The OHA fee is paid for ineffective hearings, for example Appeals, committals for sentences, appeals against sentence, sentence and confiscation hearings that are adjourned to a future hearing. The OHA fee is also used for short hearings such as mentions, CTL applications and preliminary hearings.

#### **10. Exceptions to the general rule**

There are, however, exceptions to the general rule, which are listed below.

##### PCMH (BPD)

This fee is paid on any case listed as a PCMH, and is paid whether the PCMH is effective or not (unless a guilty plea fee is appropriate or a bench warrant is issued). Code OHA should not be used for an ineffective PCMH. However, if a bench warrant is issued at the PCMH, then OHA would be the correct fee.

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Fees Clerks are reminded that a BPD is paid on the same day as a guilty plea main hearing fee if there is a PCMH for linked defendants or on linked cases.

#### Committals for sentence and sentence on indictment

If a defendant is being sentenced together on two or more matters on indictment, then counsel would only receive one SHR fee in the usual way. However, if a defendant is being sentenced on a case on indictment and a committal for sentence, then counsel should be paid an SHR and a CSE fee.

#### Committal for sentence and a main hearing on indictment

If a defendant pleads guilty at a hearing to a 'case' on indictment and then admits a committal for sentence (which is also a 'case' under GFS) and is then sentenced at the same hearing, the committal for sentence is not paid as a fixed fee, but becomes a case uplift. Counsel would be paid a guilty plea or cracked trial main hearing fee as appropriate and the fees clerk would enter '2' in the number of cases box on PARITY.

#### Confiscation Hearings and sentence hearings

If a defendant is sentenced on the same day as a confiscation hearing, counsel is entitled to the confiscation hearing fee and the sentence fee (SHR) or committal for sentence fee (CSE).

#### **11. Paying for material served electronically and electronic material generally** DVD/CD and audio or video tapes

In accordance with paragraph 44 of the Manual of Guidance, the following tapes and discs which are served in evidence are included as part of the base fee and are not remunerated separately:

- Defendant interviews
- Evidence in Chief of a Prosecution Witness
- 999 calls

The fact that such a tape or disc has been sent to the advocate should have been endorsed by casework staff on the front of the record sheet with details of what the tape or disc contains at the time the tape/disc was sent to the advocate. No payment should be made for such material.

Tapes or discs which contain any other type of material must also be recorded on the front of the record sheet with a description of the material on the tape/disc.

If the material accords with paragraph 74 (a) of the MoG:

- |   |
|---|
| a. Witness statements and records of defendant interviews formally served in evidence will always be counted as pages. If paper pages of exhibits are scanned and produced on disc for convenience, they should be counted as pages for the purpose of remunerating the advocate; |
|---|

the material should be paid as pages and no additional payment should be made for the advocate viewing the tape/disc. This also applies to photographs of the scene, injuries etc which are served in evidence as set out in ***Fees Bulletin No. 1 of 2012***.

If the material accords with paragraph 74 (b) of the MoG:

- |  |
|--|
| b. If, however, electronic media material, such as telephone data and billing, a copy of a computer hard drive or a CCTV recording, is served on disc, the advocate is paid for any reasonable time spent viewing the material at the appropriate GFS hourly rate. |
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The advocate must provide detailed work records of all work undertaken in the case highlighting that work which relates solely to the review of electronic material.

the hourly rate payment is likely to be notified to the fees clerk through the troubleshooting process as, when the case is due for payment, the fees clerk is unlikely to have the work records from the advocate. Any such application must be referred to the casework manager for authorisation prior to payment and the CCHRS or FF must be endorsed accordingly.

Further information regarding material served on tape and disc or through some other form of electronic service can be found at paragraph 74 of the MoG.

#### 12. Changes to the role of counsel during the Crown Court instruction

Advocates should be paid fees in accordance with their role at the time a fee is 'earned'. On occasions, a junior advocate may be instructed alone in a case and then later in the proceedings another trial advocate is instructed. Where this happens, any fees earned as a junior alone should be remunerated at the junior alone rate and any fees earned as a leading or led junior should be remunerated at the rate appropriate to that role.

##### Example 17

Mr Jones is briefed in a case as a junior alone on 22/10/12. He attends a PCMH on 22/11/12 and a 2:00 hour conference on 29/11/12.

On 9/1/13 Miss Colley is briefed as a led junior and Mr Jones therefore becomes a leading junior. The trial starts on 7/2/13 and lasts for 4 days.

In this scenario, Mr Jones should be paid as advocate type A for the PCMH and the conference. He should then be paid as advocate type D for the trial (Miss Colley will be paid as advocate type B for the trial).

#### 13. Partial pleas

Paragraph 95 of the MoG confirms that:

With the exception of retrials, there is a GFS principle that there can only be one main hearing on an indictment (a case) per defendant (subject to paragraphs 86-90 and 96-101). That main hearing will occur when the indictment against a particular defendant is resolved (see paragraphs 31-37). In circumstances therefore where a defendant enters a guilty plea but is subsequently allowed to withdraw that plea, the main hearing fee will be paid for the hearing at which the indictment is finally resolved (ie by the defendant re-entering a guilty plea, the prosecution offering no evidence or an effective trial). No main hearing fee will be paid for the hearing at which the first guilty plea was entered.

This is very important so far as the accurate payment of fees is concerned. Where some guilty pleas are entered to an indictment at a hearing, but there are still outstanding counts on that indictment which are unresolved, there is only a **main hearing** when all counts have been resolved.

##### Example 18

On 1/10/12, a defendant has a single indictment listed for PCMH; he is charged with 7 counts of burglary and one count of rape. He pleads guilty to the 7 counts of burglary but not guilty to the count of rape and the rape is adjourned for trial. In this scenario, despite the guilty pleas, there is

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no main hearing on 1/10/12 because there is still an outstanding count on the indictment which has not been resolved. A BPD fixed fee should therefore be paid for the hearing on 1/10/12.

There will only be a main hearing when the defendant pleads guilty to the rape, the prosecution offers no evidence (cracked trial) or there is a trial of the remaining count (effective trial).

Court Business Unit  
Operations Directorate  
26<sup>th</sup> February 2013