

Fees Bulletin No.1 of 2015

Very High Cost Cases



Issue no. 1
24 February 2015

Very High Cost Case (VHCC) Terms of Appointment – version 5.0

The CPS Very High Cost Cases Terms of Appointment has been revised. The document defines the services which the CPS expects of internal and external advocates in the preparation of cases and invoicing of fees which fall to be paid in accordance with the Very High Cost Case (VHCC) fee scheme.

The revised VHCC Terms of Appointment has been developed in consultation with the Remuneration Committee of the Bar Council.

Implementation

The revised VHCC Terms of Appointment (version 5.0) replaces version 4.0, which was introduced in January 2012. Version 5.0 shall apply to all new VHCC instructions accepted on or after 1 March 2015.

If you have any queries regarding implementation please contact your Case Auditor.

Summary of changes

The table below outlines the main revisions to the Terms of Appointment.

Paragraph	Section	Version 5.0 – March 2015	Version 4.0 – January 2012
2.0.1 – 2.0.5	Background	New section outlining the background and principles of the scheme.	No previous reference.
4.1.2 – 4.1.3	Identifying a VHCC	Outlines the Multiple Defendant / Multiple Trial provisions introduced in August 2009 and already set out in the GFS C Manual of Guidance	No previous reference.
4.1.4	Identifying a VHCC	Outlines the provision which allows the advocate to apply to be remunerated under VHCC where the page count in a GFS case exceeds 15,000.	No previous reference.
4.4.2	Identifying a VHCC	Outlines the discretion to remunerate exceptional Magistrates Court trials, which last less than 4 days, under VHCC e.g. trials in the Youth Court re: indictable only offences	No previous reference.

4.5.2	Identifying a VHCC	Confirms the basis upon which the estimated cost of a VHCC should be calculated in potential reduced scheme instructions.	No previous reference.
6.3.1	Determining the Fee Category	<p>1) To clarify the basis upon which the fee category for appeal cases is determined.</p> <p>2) To include confirmation that the VHCC fee category for a Crown Court instruction will be maintained where the matter is referred to the higher court.</p> <p>3) To remove reference to Serious Fraud cases in respect of the fee category applicable in appeal cases.</p>	<p>Paragraph 6.3.1 states that:</p> <p>“In Court of Appeal and Higher Court cases the reviewing lawyer shall determine the hourly preparation, refresher and other hearing rates at Category 1, Category 2 or Category 3, by considering the particular complexities of the case and the previous history of the case. Category 1 must only be used in Serious Fraud cases, Terrorism cases (see Glossary) and matters referred to the House of Lords.</p>
6.5	Determining the Fee Category	Fee selection criteria in respect of Extradition proceedings	No previous reference.
7.0.5	Managing Preparation	<p>To include the following:</p> <p>“Unspent hours from a previous stage should not be carried forward.”</p> <p>All work agreed in a stage plan should be specific to each stage. Where tasks allocated to a previous stage are outstanding or incomplete, a revised allocation of hours should be agreed.</p>	<p>Paragraph 7.0.9 states that</p> <p>“If counsel is unable to undertake some or all of the work agreed on the stage plan, the reviewing lawyer should be notified and the work will be carried over to the next stage with the agreement of the reviewing lawyer.”</p>
7.0.9	Managing Preparation	Removes the discretion to allow payment for work undertaken but not agreed in the stage plan when necessary additional work arises from the service of further papers in the same category of documentation that has already been agreed.	Paragraph 7.0.7 (i) states that “when necessary additional work arises from the service of further papers in the same category of documentation that has already been agreed” the additional hours may be allowed.

9.0.1 – 9.0.2	Administrative Work	<p>Payment will not be made for time spent purely on administrative matters. Administrative work is any work not directly part of the legal preparation of the case.</p> <p>Advocates instructed under the scheme will not be paid for preparing, checking or signing a claim for costs.</p>	No previous reference.
10.0.1 – 10.0.2	Work Records	Sets out the requirement that preparation, conference time, advocacy and travel time <u>must</u> be logged electronically using the CPS VHCC work log template	Use of CPS VHCC work log is currently optional.
10.0.2	Work Records	Sets out the requirement that the advocate must record start and end times for all other chargeable work, such as court hearings / days in court and travel time at or about the time that the work is undertaken.	No previous reference.
15.0.2	Full Day Advocacy	The full day advocacy rate shall remunerate the advocate for all work and advocacy undertaken during a 7 hour period between 10.00 and 17.00. This is based on the traditional 'refresher' principle of allowing a 5 hour court day and up to 2 hours for preparation either before or after the hearing.	<p>Paragraph 14.0.1 states that the "full day advocacy rate will be paid if counsel is in court for more than 3½ hours."</p> <p>Paragraph 14.0.2 goes on to say that "It is assumed that a full day refresher will include 5 hours in court and up to 2 hours preparation either before or after the hearing."</p>
15.0.3	Full Day Advocacy	Payment for preparation, conference time and travel time undertaken or spent during the 7 hour period is assumed within daily advocacy rate.	No previous reference.
15.0.4 & 16.0.4	Full Day Advocacy & Half Day Advocacy	Under no circumstances can an individual advocate receive a daily advocacy fee for two cases on the same day. If the advocate is involved in two separate trials on the same day and there is no stand-in in either case, the leave of the reviewing lawyer in each case must be sought and the advocate must elect one case in which the daily fee will be claimed and paid. This applies equally to VHCC and GFS cases or a mixture of both.	No previous reference.

16.0.2	Half Day Advocacy	The half day advocacy rate shall remunerate the advocate for all work and advocacy undertaken during a 3½ hour period. The 3½ hour period is deemed to run between 10.00 and 13.30 in respect of the morning court session, and 13.30 and 17.00 in respect of the afternoon court session.	Paragraph 14.0.2 states that “It is assumed that the half day refresher shall include 2½ hours in court and 1 hour preparation.
16.0.3	Half Day Advocacy	Payment for preparation, conference time and travel time undertaken or spent during the 3½ hour period is assumed within the half day advocacy rate.	No previous reference.
17.0.2	Other Hearings	The Other hearing rate should not be applied to substantive appeal hearings	No previous reference.
19.0.1 – 19.0.2	Disclosure Counsel	Outlines the basis of instruction for a disclosure counsel in accordance with existing practice.	No previous reference.
20.0.3	Travel and Hotel Expenses	All rail travel must be undertaken using standard class travel unless very exceptional circumstances apply, for example where a first class ticket represents better value for money than standard class. In those circumstances, first class travel may be used but only with prior authority from the reviewing lawyer	Paragraph 18.0.1 states the following: “First class travel will be considered if the reviewing lawyer is satisfied that counsel is engaged in work on the preparation of the case whilst travelling. First class travel must be agreed in advance with the reviewing lawyer.”
20.0.4	Travel and Hotel Expenses	If own transport used payment will be made at £0.25 per mile.	Paragraph 18.0.1 states: “If own transport used, payment will be made at £0.45 per mile.”
21.0.1 – 21.0.4	Travel & Waiting Time	Travel time will be paid for reasonable time spent travelling to and from a conference, view of a scene or where the advocate is instructed to appear in a court which is further than 25 miles (40 kilometres) from chambers.	Paragraph 18.0.1 states: “Counsel may also claim an additional hourly rate of £25 (regardless of grade) for reasonable travel and waiting time to and from a conference, view of the locus or court hearing.”

25.0.2	Secure Email	The advocate must use secure e-mail – both to receive instructions and to communicate advice.	Paragraph 22.0.2 states that: “Counsel shall be expected to use secure e-mail when available”
26.0.1 – 26.0.2	Case Auditor	Outlines the role of the Case Auditor.	No previous reference.
Annex A	Fee Selection Criteria Part 1 – Fraud Cases	The length of the trial (or cumulative length where a single case is subsequently split into a series of trials) is estimated at: Over 16 weeks	The length of the trial is estimated at: a) Over 20 weeks
Annex A	Fee Selection Criteria Part 2 – Non-Fraud Cases	The volume of prosecution documentation (excluding unused material) exceeds 10,000 pages	Block B The volume of prosecution documentation(excluding unused material) exceeds: a) 10,000 pages b) 5,000 pages
Annex A	Fee Selection Criteria Part 3 – Extradition Cases	Criteria for setting hourly rates in Extradition Cases	No previous reference.
Annex A	Fee Selection Criteria Part 4 – VHCC Rates of Remuneration	Inclusion of Half Day Advocacy rates	No previous reference.
Annex B	Guidance to the Fee Selection Criteria and Fee Categories	Revised guidance in respect of the criteria for Fraud Cases, Non-Fraud Cases and Extradition Cases.	Guidance previously to be found in VHCC manual of Guidance

This bulletin has been posted on the CPS Infonet and CPS website and can be shared with chambers.