



GRADUATED FEE SCHEME

SCHEME E

MANUAL OF GUIDANCE

With effect from 1 February 2020

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Background

1. The Crown Prosecution Service (CPS) Graduated Fee Scheme (GFS) was introduced on 29 October 2001. This first version of the scheme became known as scheme A and has proceeded with subsequent versions as follows:
 - Scheme B applied to all cases committed, transferred or sent to the Crown Court on or after 3 October 2005.
 - Scheme C was introduced for all cases where the advocate was instructed on or after 1 March 2012, with all pre-existing cases transferred to scheme C from 1 August 2012.
 - Scheme D applies to all hearings in pre-existing cases that took place on or after 1 September 2019, and to all new cases between 1 September 2019 and 1 February 2020
 - Scheme E applies to all cases sent or transferred to the Crown Court on or after 1 February 2020.
2. This Manual of Guidance (MoG) sets out the principles and details of how the CPS Graduated Fee Scheme E should be applied. It is intended for use by external practitioners and CPS staff.
3. Queries regarding CPS fee schemes should be referred to the Court Business Unit, via e-mail to CBU@cps.gov.uk.

Introduction

4. The Graduated Fee Scheme is used to remunerate advocates for all cases sent to the Crown Court where the trial estimate recorded by the Court is 40 days or less and there are no more than two trial advocates instructed in the case. The scheme also applies to committals for sentence and appeals against conviction and sentence heard in the Crown Court.
5. Where a Disclosure Junior is instructed in a GFS case (but is not acting as a trial advocate) the trial advocate(s) should be paid under the GFS and the Disclosure advocate should be paid on a NOFF using the Very High Cost Case (VHCC) rates applicable to an enhanced second led junior.
6. In cases on indictment that fall within GFS the advocate cannot request that the case, or any part of the case, be taken out of the scheme and for the fees to be assessed on an ex post facto basis (subject to the one exception set out at paragraph 14 below). The scheme provides the maximum levels of remuneration payable by the CPS to the advocate.
7. However, in appeals against conviction and/or sentence, committals for sentence and indictable only cases discontinued before service, in exceptional circumstances the advocate may apply for

the hours of preparation to be paid at the GFS hourly rate in addition to the fixed fee (see paragraphs 173 and 207).

8. If a trial is estimated at 40 days or less but the trial actually lasts in excess of 40 days, the provisions of GFS will still apply.

Multiple Defendant / Multiple Indictment Cases

9. The CPS Head of Fees has discretion to remunerate certain cases under the Very High Cost Case (VHCC) scheme arrangements, where they would otherwise have fallen to be paid in accordance with the GFS.
10. Under current arrangements, where two or more of the following criteria are met, CPS staff should refer the following cases to the Head of Fees, Court Business Unit:
 - There are more than 6 defendants
 - The case has more than **5,000** pages of served prosecution evidence in a single core bundle
 - The case has three or more indictments emanating from the single core bundle of evidence, or the indictment in a case is severed at PTPH or subsequently and three or more indictments are created, each relying on the single core bundle.
11. In addition, the advocate may apply to the Head of Fees for any case in which there are more than 15,000 pages of served evidence to be remunerated under VHCC arrangements.
12. Referral does not mean that a case will automatically be managed under the VHCC arrangements. The decision will rest with the Head of Fees.
13. In circumstances where it is determined by the Head of Fees to take the case into the VHCC scheme, the advocate will be informed in writing and will have an opportunity to make representations to the Head of Fees.

Work Records

14. Claims for hourly rate work under the GFS such as Wasted Preparation, Special Preparation and viewing time will not be considered unless supported by detailed electronic work records.
15. Where the application is for a special preparation payment (including payment for work done in confiscation proceedings with over 1,000 pages), detailed records of ALL work done in the case

must be provided for an application to be considered, not just records relating to the additional hours.

16. The records should record the date, the details of the task undertaken and the time spent using the 24 hour clock. For example:

24.8.2019	Reading and considering medical evidence	19:00 to 21:30	2hrs 30mins
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Retrials ordered by the Court of Appeal

17. If the Court of Appeal orders a retrial, the resulting proceedings in the Crown Court will be regarded as a new instruction. The advocate will be remunerated in accordance with either the GFS or VHCC arrangements, whichever applies at the time of instruction for the new proceedings.
18. In these circumstances, if the retrial falls to be paid under GFS, the advocate will receive an effective trial main hearing fee and not a retrial main hearing fee. If however, the jury is discharged at the trial and there is a further trial, the retrial provisions will apply.

Warrants pre dating the implementation of scheme E

19. In cases where a bench warrant is issued before 1 February 2020 and the warrant is executed on or after that date, the advocate will be remunerated under GFS scheme E or the VHCC scheme, whichever applies, for any hearings which take place on or after the date the warrant is executed.

Proceeds of Crime Act (POCA) Restraint Proceedings

20. Proceedings in the Crown Court which relate to POCA restraint (as opposed to POCA confiscation) do not fall to be paid under the GFS. Such applications will usually attract a mention fee (OHA).
21. If an advocate is required to undertake an exceptional amount of preparation in relation to such an application, the hours required should be agreed with the advocate in advance. The hourly preparation rate applicable to VHCC category 3 will be applied to any reasonable hours of preparation and the VHCC fee category 3 'other' hearing fee will be payable for the restraint hearing. Any such agreement must be confirmed in writing at the time of instruction. Payment for hours of preparation will only be made upon production of detailed electronic work records.
22. Fees for applications in relation to POCA restraint are paid in accordance with the VHCC scheme.

Serious Crime Prevention Orders (Serious Crime Act 2007)

23. Where an advocate is instructed to undertake preparation and hearings in relation to a Serious Crime Prevention Order, the hours of preparation required should be agreed with the advocate in advance. The hourly preparation rate applicable to VHCC category 3 will be applied to any reasonable hours of preparation and the VHCC category 3 'other' hearing fee will be payable for the hearing. Any such agreement must be confirmed in writing at the time of instruction. Payment for hours of preparation will only be made upon production of detailed electronic work records.

DEFINITIONS

Definition of a 'Case'

24. 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. In relation to multiple cracked trials paragraph 106 also applies.
25. 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 cannot attract a main hearing fee.
26. 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.
27. In committals for sentence, a 'case' is a single memorandum of conviction arising out of proceedings in the Magistrates' Court on a single day.

Main Hearings and Main Hearing Dates

28. A main hearing occurs only when there is the resolution of an indictment against a defendant. The main hearing on a case on indictment is defined as:
 - a) **Guilty plea** – the main hearing and the main hearing date is the hearing at which the defendant enters acceptable guilty pleas, the prosecution offers no evidence or the indictment is quashed or stayed, in circumstances where the case has not been adjourned for trial.
 - b) **Cracked trial** – the main hearing and the main hearing date is the hearing at which the defendant enters acceptable guilty pleas, the prosecution offers no evidence or the indictment is quashed or stayed in circumstances where the case has previously been formally adjourned by the court for trial.
 - c) **Effective trial** – for a case to be deemed to be an effective trial, two criteria must be met:
 - i. the jury must be sworn and
 - ii. evidence must be called or read before the jury.

For the purposes of scheme E, the definition of a trial includes days prior to the swearing of the jury, provided those days constitute meaningful progress that lead to a jury being sworn and evidence called. The full definition can be found from paragraphs 122.

The main hearing in an effective trial is the whole trial, from the date the trial process is deemed to have begun until the date the jury return a verdict or is discharged.

In cases where there is an effective s28 hearing (YCEA 1999) the main hearing date will be the date of the first effective s28 hearing, the main hearing will continue with any further s28 hearings, the substantive trial proceedings from the swearing of the jury and until the jury return a verdict or is discharged.

- d) If another indictment is dealt with during the effective trial main hearing, the case uplift provisions at paragraphs 77-81 will apply.
- e) **Newton Hearing** – the hearing at which the guilty plea is entered and the day(s) of the effective Newton Hearing are combined and the proceedings are treated as an effective trial. The main hearing date is the date the guilty plea is entered.

- 29. Details regarding the calculation of main hearing fees in cases on indictment can be found at paragraphs 294-295.
- 30. Where there is more than one case (i.e. more than one indictment) and a decision is made that one or more of those cases should be left on the file, the main hearing date for that case, or cases, is the date all parties were informed of the decision and not the date of sentence when the formal order to lie on file is made.
- 31. In respect of cases not on indictment, the main hearing and main hearing dates are:
 - a) Appeals against conviction and sentence - the date the appeal is heard
 - b) Committals for sentence – the date the facts are opened
 - c) Breaches of Crown Court Orders – the date the facts are opened
- 32. If more than one case is heard at the same time and result in main hearings, the case uplift provisions detailed in 77-81 will apply.
- 33. In cases where a single advocate is instructed, the advocate must be present at the main hearing to receive the main hearing fee. However, in circumstances where an external advocate holds a brief, the case is listed at short notice and an internal advocate deals with the main hearing, the main hearing fee will be paid to the external advocate. Further details can be found at annex 7.
- 34. In cases where two trial advocates are instructed, and where there is a main hearing at which only one advocate attends, consideration may be given to remunerating the absent advocate

with a main hearing fee if prior agreement for the non-attendance was obtained from the Paralegal Business Manager in writing.

Main Hearing fee

35. All main hearing fees under scheme E are based on the fee payable for a one day effective trial. 100% of this fee is payable for a one day effective trial and cracked trial main hearings (subject to paragraph 106). 45% of the fee is payable for guilty plea main hearings. Under scheme E, the base fee covers only the first day of trial with trial daily fees (TDF) payable from day two onwards.
36. The main hearing fee is made up of a 'standard' or 'enhanced' base fee which is set according to the advocate type, the offence class and the overall volume of evidence served in the case.
37. Within each offence class there is a page threshold which determines whether the advocate receives a 'standard' base fee or an 'enhanced' base fee. The number of pages served in evidence determines whether the standard base fee or the enhanced base fee is payable. Pages up to and including the 'page cut-off' will be remunerated at the 'standard' rate and pages in excess of the 'page cut-off' will be remunerated at the 'enhanced' rate.
38. The witness uplift is not payable under scheme E. However, any junior alone case will automatically be paid as an Enhanced Fee where the served witness count exceeds 100, regardless of the number of pages of evidence.
39. If more than one main hearing is heard at the same time all additional cases are remunerated with a case uplift of 10% of the base fee of the principal case. The case uplift provisions are detailed at paragraph 77-81.
40. The Base Fee payable is dependent on:
 - a. the type of case:
 - i. Guilty Plea
 - ii. Cracked Trial
 - iii. Effective Trial, and
 - b. the category of advocate:
 - i. Queen's counsel
 - ii. Leading junior
 - iii. Led Junior
 - iv. Junior advocate alone

DVD and Audio/Video Tapes (excluding electronic material at paragraph 71-73)

41. The following tapes and discs which are served in evidence are included as part of the base fee and will not be remunerated separately:
- Defendant interviews
 - Evidence in Chief of a prosecution witness
 - 999 calls

Indictment & offence class

42. For the purposes of a graduated main hearing fee, an indictment is a case.
43. It follows that if counts are severed from an indictment, resulting in the creation of more than one indictment, there will be more than one case. Each case attracts a separate main hearing fee per defendant, subject to the case uplift provisions at paragraphs 77-81, the defendant uplift provisions at paragraphs 92-98 and the multiple cracked trial provisions at paragraph 106.
44. If two or more indictments are sent or transferred separately and then subsequently joined, there is a single indictment, which would attract a single main hearing fee per defendant, subject to the case uplift provisions, the defendant uplift provisions and the multiple cracked trial provisions.
45. If the indictment upon which the advocate is conducting the main hearing contains more than one count in different offence classes, the advocate must select the offence class upon which remuneration will be based.
46. The Scheme provides a Table of Offences that places offences into class A – K (see Annex 1 and 2)
47. The Main Hearing Fee is based on the class of offence where at least one count must appear on the indictment upon which the advocate is conducting the main hearing.
48. In cases where there is more than one defendant on the indictment and there are separate main hearings, only offences which relate to the defendant(s) at the main hearing can be claimed.
49. It is for the advocate to select the offence category upon which the main hearing fee will be based.
50. Any offence that is not contained on the list of offences will fall within offence class H, unless the advocate is able to show a higher offence category is appropriate to the circumstances of the case. Any application to move the offence in to a higher offence class must be submitted in writing.

51. Where there is a conspiracy, incitement or attempt to commit any of the offences in the table of offences, the offence class is deemed to be the same as the class of the substantive offence.
52. In the case of robbery, an armed robbery is payable under offence class B and unarmed robbery under offence class C. For the purpose of GFS, for a robbery to be treated as an armed robbery a defendant or co-defendant to the offence must have been armed with a firearm, imitation firearm, or offensive weapon, or the victim must have believed that they were so armed e.g. the defendant purported to be armed with a gun or offensive weapon and the victim believed him to be so armed, even if it subsequently turned out that he was not. Also, where the defendant or co-defendant to the offence was in possession of an offensive weapon, namely a weapon that had been made or adapted for use for causing injury or incapacitating a person, or intended by the person having it with him for such use, such an offence should be classified as an armed robbery.

Value Threshold for Offences of Dishonesty and Arson

53. Non-aggravated arson falls into offence class C but where the value is greater than £100,000, non-aggravated arson will fall in to offence class B. The value of the case should be determined based on the evidence contained in the statements and exhibits served as part of the prosecution case.
54. There are certain offences of dishonesty which fall in to offence class F, if the value is up to and including £30,000. A value over £30,000 and up to £100,000 will put the offence in to class G and a value greater than £100,000 will put the offence in to class K. The value of the case should be determined based on the evidence contained in the statements and exhibits served as part of the prosecution case.
55. It is for the advocate to provide evidence to support a valuation over £30,000 or over £100,000. This may be in the form of extracts from the indictment or the statements and exhibits.
56. If the same property is covered by alternative counts such as theft / handling; the value of the property can only be counted once.
57. Offences that have been taken into consideration by the Judge upon sentence (TICs) shall not be taken into account when calculating the value.

Pages of Prosecution Evidence

58. The number of pages formally served in evidence in a case determines whether the advocate receives the 'standard' or the 'enhanced' base fee.

59. Only evidence formally served in evidence and copied to all parties either as part of the sending bundle or subsequently served under a written Notice of Additional Evidence (NAE) can be counted as pages, subject to paragraphs 60-68.
60. The pages of prosecution evidence to be counted are:
- a) witness statements
 - b) documentary exhibits including defendant interviews
 - c) statements and documentary exhibits served under a Notice of Additional Evidence
 - d) photographs (where more than one photograph is copied on to one page, it is the number of pages, not the number of individual photographs that is counted)
61. Pages that are **excluded** are:-
- a) title pages and lists of documents (e.g. front sheets on NAEs, list of witnesses and exhibits)
 - b) pages of unused material
 - c) pages of bad character material which are not formally served under a Notice of Additional Evidence
 - d) pages relating to hearsay applications and special measures applications
 - e) defence witness statements and expert reports served on the prosecution
 - f) jury bundles
 - g) Material excluded by virtue of electronic material guidance at paragraphs 71-72.
62. In Early Guilty Plea (EGP) cases, however, where the plea is taken before the formal service of evidence and the Key Statements and Key Exhibits within the Initial Details of the Prosecution Case (IDPC) can be used to establish the page count. This includes defendant interviews, photographs and draft transcripts of witness evidence.
63. If a summary of an interview with the defendant is deemed to be insufficient and a full transcript is subsequently prepared by either the prosecution or the defence, the advocate is entitled to be paid for the pages of the full transcript in addition to the pages in the summary already served in evidence. However, any edited versions of interviews which have been prepared for the jury should not be counted.
64. If a Judge orders that any transcript of evidence be served on all parties, the pages of such transcripts should be included in the page count. Otherwise, at a retrial, where transcripts of the original evidence given are produced, those pages should not be counted.
65. If the evidence in chief of a witness is served on video/DVD as part of the prosecution case, the transcript of the recording should be included in the page count. Any subsequent edited versions of the transcript, prepared for the jury, should not be counted.

66. The same page must only be counted once, irrespective of the number of times it appears in the papers. Part pages are counted in the same way as full pages.
67. The number of pages to be counted is the number of pages which have been formally served at the time of each main hearing.
68. Pages of sensitive unused material considered by the advocate in relation to the making of a PII application are not counted for the purposes of establishing the page count but will be remunerated by way of reasonable viewing time in accordance with paragraphs 69-70 and 254.

Public Interest Immunity (PII) material

69. Pages of sensitive unused material considered by the advocate on the instruction of CPS in relation to a PII application will be remunerated by way of time reasonably spent viewing that material upon production of detailed electronic work records (see also paragraph 254.).
70. Pages of material produced by a third party (for example the Local Authority, Social Services etc.) will not be counted in the page count. Time spent reviewing this material will, however, be remunerated in accordance with the payment arrangements for unused material (UM1 and UM2) as detailed in paragraph 74.

Electronic Material

71. Evidential material which is produced and served in an electronic format will be categorised as follows:
 - a) The following evidential material will be counted as pages of prosecution evidence (PPE):
 - i. witness statements
 - ii. records of defendant interviews
 - iii. ABE interviews formally served in evidence
 - iv. paper pages of exhibits never been held electronically but scanned and served electronically for presentation purposes
 - v. documentary exhibits created electronically and individually exhibited, subject to the following restrictions outlined in the next paragraphs
 - vi. analyst reports relating to telephone data, social media download material or any other type of computer/device download material (excluding material merely exhibited by an analyst – see (b)(iii) below
 - b) Reasonable time spent viewing or reading the following evidential material will be paid at the appropriate GFS hourly rate:
 - i. raw telephone data / billing

- ii. social media material
- iii. download material
- iv. images from a computer or other electronic device,
- v. copy of a computer hard drive
- vi. CCTV recording, or any other type of electronically held evidence.

In order to claim for work covered in 71b, the advocate must provide a detailed electronic work record, in accordance with paragraph 16.

72. Evidential material listed at 71b will not qualify as a page under paragraph 71a and can never be treated as a page, even if it is subsequently printed off into paper format, or made subject of a judicial order to include it in the pagination for Legal Aid Agency purposes.
73. The advocate will not be paid viewing time for consideration of any material that has been included in the PPE figure.

Unused Material

74. Payment for the consideration of unused material will be paid in one of two ways under Scheme E:
- i. Unused material additional fee (UM1)
All elected Cracked Trials and Effective Trial main hearings (incl. retrials) will attract an additional fee (UM1) equivalent to 1 ½ hours. This will be paid automatically and covers up to 3 hours spent considering the unused material.
 - ii. Unused material at the GFS hourly rate – UM2
Reasonable time spent considering unused material, over and above the 3 hours assumed within UM1, will be paid at the GFS hourly rate on production of detailed work records (UM2). Work records must include all work undertaken on the unused, including the first 3 hours covered by UM1

Main Hearing Fee

75. For the purposes of the GFS all preparatory work carried out by the advocate is deemed to be included in the main hearing fee. The main hearing fee remunerates advocates for the following:
- a) Reading all papers in the case
 - b) Drafting / checking the indictment
 - c) Preparation in relation to special measures applications
 - d) Written confirmation of the sufficiency of evidence
 - e) Preparation for the cross-examination of witnesses

- f) Written and oral advice (subject to paragraph 76 below)
- g) Contact with defence representatives
- h) Researching the law
- i) Preparation of written submissions, notices, schedules or other documents for use at the main hearing
- j) Listening to and viewing those tapes and discs detailed at paragraph 41.

76. There are three exceptions to (g) above. Any work in relation to the advice work listed below will be paid at the GFS hourly rate applicable to the level of advocate and upon receipt of detailed electronic work records.

- a) Unduly lenient sentence advices – if the advocate is asked to advise, after sentence, as to whether the sentence may be unduly lenient
- b) Terminating Ruling advices – if the advocate is asked to advise on the merits of an appeal to the High Court following the making of a Terminating Ruling at a pre-trial hearing or during a trial in the Crown Court
- c) Rape acquittal advices – if the advocate prepares an advice following an acquittal in a rape case.

Case Uplift

- 77. If cases are heard at the same time and main hearings result, the case uplift provisions will apply. The advocate shall elect the principal case upon which the full main hearing fee will be paid and a 10% uplift of the standard or enhanced base fee will apply to the additional cases.
- 78. If a number of cases are listed on the same day, each case is based on a common core bundle of evidence and more than one main hearing results on that day, the advocate must elect the principal case upon which the graduated main hearing fee will be paid. The other cases will be remunerated by way of case uplifts.
- 79. An uplift of 10% of the base fee of the principal case will be allowed for each additional main hearing that is heard at the same time. This principle applies to guilty pleas, cracked trials, effective trials and instances where a committal for sentence or an appeal is dealt with at the same time as a case on indictment
- 80. If the principal case is a committal for sentence, appeal against sentence, or appeal against conviction and there is no case on indictment heard at the same time the uplift is calculated as being 10% of the appropriate fixed fee.

81. A case uplift only is payable but the number of defendants in the additional case(s) is not calculated.

Mixed Pleas, Multiple Main Hearings, Concurrent and Consecutive Main Hearings

82. 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 (see paragraphs 77-81)
83. 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. The advocate will be paid defendant uplifts for each additional defendant having a main hearing on the elected case only. Defendant uplifts are not payable on unelected cases.
84. Main hearing fees under scheme E cover a single day. Accordingly, additional cases dealt with on the same day fall to be remunerated under the multiple main hearing or mixed plea arrangements, whichever is appropriate. This applies to other main hearings and fixed fees.
85. If there is more than one main hearing on the same day, the advocate must elect one of the main hearings as the principal case.
86. Where more than one defendant is listed for trial and meaningful progress in respect of at least one defendant starts the trial process (subsequently becoming an effective trial), any cracked trial main hearing during the trial period in respect of any co-defendant will be deemed to have occurred concurrently. Accordingly, the cracked trial main hearing fee(s) and/or cracked trial daily fee(s) (CDF) will not be paid separately. In such circumstances, the effective trial main hearing fee will be paid with defendant uplifts in respect of co-defendants whose cases cracked during the trial process.
87. 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 77-81 and 92-98). That main hearing will occur when the indictment against a particular defendant is resolved (see paragraphs 28-34). 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 (i.e. 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.

Conducting Multiple Hearings on the Same Day

88. Prosecuting advocates can conduct multiple hearings on the same day provided the cases are not heard simultaneously and the advocate is able to afford each case the attention it requires

on the day – both in and out of court. For example, an advocate can conduct a number of fixed fee hearings in the same or different courts on one day if they occur at different times.

89. In relation to cases listed for trial, an advocate instructed alone can conduct two separate trials on the same day provided that the jury has retired in at least one of the cases. For example, where trial A concludes at lunchtime and trial B begins in the afternoon, separate fees will be paid for both cases, in this instance a Daily Trial Fee (TDF) and a Main Hearing fee. Also, where one trial follows another trial in the same court, an advocate can be paid whilst a jury is out, as well as conducting the follow-on trial. This applies equally to VHCC and GFS cases or a mixture of both. If the advocate is involved in two separate trials on the same day and there is no stand-in advocate in either case, the leave of the court and CPS reviewing lawyers in each case must have been sought to ensure each case receives the attention it requires – both in and out of court.
90. In two-advocate (or more) trial cases, it is not permissible for one advocate to be excused before the jury has retired, to conduct a trial in another court and be paid Main Hearing Fees and/or Daily Fees (TDF/CDF) for both cases (even with leave of the court and reviewing lawyers). In these circumstances, the advocate must elect which case they will receive payment for. However, just as for an advocate instructed alone it is permissible for one or more of the advocates in a two-advocate (or more) trial to conduct two separate trials on the same day provided that the jury has retired in at least one of the cases.
91. In two-advocate (or more) trial cases, it is permissible for one advocate to be excused for part of the day to conduct a fixed fee hearing in another court e.g. a sentence hearing or a Newton Hearing lasting less than a day (with leave of the court and reviewing lawyer in the trial case) and receive payment for both hearings. Similarly in two-advocate (or more) trial cases it is permissible for one advocate to be excused for part of the day to conduct a hearing in another court at which a guilty plea is entered or no evidence is offered and receive payment for both hearings. In doing so, the advocate must ensure that the trial is prioritised and afforded the attention it requires on the day – both in and out of court.

Defendant Uplift

92. For cases on indictment, an uplift of the standard or enhanced base fee is payable for the second defendant and for each subsequent defendant at a main hearing in the principal case.
93. The rate of defendant uplift under scheme E is as follows:
- Junior alone – 15%
 - Queen’s Counsel, Leading Junior, Led Junior – 10%
94. Where a cracked trial daily fee (CDF) is payable for an unelected cracked trial (see paragraph 106-107), an uplift of the fee is payable for the second defendant and for each subsequent defendant having an unelected cracked trial hearing on the same day.

95. The fixed fees for appeals against conviction, appeals against sentence, breaches of Crown court orders and committals for sentence attract an uplift of the fixed fee for the second defendant and each subsequent defendant in the principal case.
96. Where cases are heard together and main hearings result, the advocate must elect a principal case upon which the main hearing fee will be paid. Defendant uplifts are not paid for defendants on the unelected case(s) (see paragraph 88).
97. An uplift of the fixed fee is allowed for each additional defendant in the following circumstances:
- a) **BPD** – Plea & Trial Preparation Hearings
 - b) **FCM** – Further Case Management Hearings
 - c) **PAW, PAH** – hearings where a daily or half day rate is applicable, legal argument, PII, etc.)
 - d) **SHR, DSE** – sentences and deferred sentences
 - e) **OHA** – any non-effective hearings that were not listed for trial (where a standard appearance fee would be paid), bail act offences and mentions, and compliance hearings
 - f) **BRE** – Breach of Court order
98. A defendant uplift is not payable in respect of the following fixed fees:
- Trial Stood Out fee (NEF)
 - Cracked Trial Daily fee (CDF) (subject to paragraph 94)
 - Bad Character/Hearsay application fee (BCH)

Guilty Plea

99. The guilty plea main hearing fee is 45% of the effective trial standard or enhanced base fee depending on the number of pages of evidence served in the case. The fees are set out in annex 3.
100. A guilty plea main hearing fee is payable to the advocate if an acceptable plea of guilty is entered by the defendant, in circumstances where the case has not previously been adjourned for trial. The definition of adjourned for trial is detailed at paragraph 112.
101. A guilty plea fee is also payable to the advocate if the prosecution offers no evidence or the indictment is stayed, in circumstances where the case has not previously been adjourned for trial.

102. Should a defendant enter acceptable guilty pleas (or the prosecution offer no evidence or the judge stays the indictment) at a hearing following the PTPH, at which the case had not been formally adjourned for trial, the guilty plea fee also applies.
103. If there is an effective Newton Hearing after a guilty plea, the case does not attract a guilty plea fee (see paragraphs 155-158).
104. An uplift is payable for each additional defendant (See paragraphs 92-98).

Cracked Trial

105. The cracked trial main hearing fee is 100% of the effective trial standard or enhanced base fee depending on the number of pages of evidence served in the case. The fees are set out in annex 3.
106. 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.
107. All other unelected cracked trial events will be remunerated by way of the cracked trial daily fee (CDF). An uplift is payable for each additional defendant (see paragraph 94). This provision also applies where a retrial results in a cracked trial hearing.
108. Should more than one advocate prosecute different cracked trial hearings, chambers should elect the single cracked trial hearing which will attract the main hearing fee. In two advocate cases (i.e. QC and Led Junior or Leading Junior and Led Junior), the advocates are treated individually and each advocate can elect the cracked trial hearing upon which the full main hearing fee will be paid.
109. A cracked trial fee is payable to the advocate if acceptable guilty pleas are entered by a defendant at any hearing where the case has previously been adjourned for trial.
110. A cracked trial fee is also payable to the advocate if the prosecution offers no evidence or the indictment is quashed or stayed at any hearing where the case has previously been adjourned for trial.
111. For a cracked trial fee to be paid in any circumstances, the case must either crack on the day of the trial or have previously been formally adjourned for trial.
112. The definition of 'adjourned for trial' is:

- a) If the defendant has previously been arraigned and entered a not guilty plea and the case had formally been given a trial date by the court, or
 - b) If the defendant has entered a not guilty plea and the case has been adjourned for a s28 (Youth and Criminal Evidence Act 1999) hearing, and the case is subsequently dealt with as a guilty plea, offering no evidence or the indictment quashed
 - c) The case has been formally adjourned for the issue of Fitness to Plead to be resolved
113. If either the prosecution or defence is granted an adjournment of a PTPH to allow further time to consider their position, the case is not deemed to have been adjourned for trial. Accordingly, if the case is subsequently relisted and either the defendant pleads guilty or the prosecution offers no evidence, the main hearing fee payable will be a guilty plea fee and not a cracked trial fee.
114. If a jury is discharged and the case is adjourned for the prosecution to decide whether to retry the case, the case is then listed and the prosecution offers no evidence (or the case is listed and the defendant enters acceptable guilty pleas), a Standard Appearance Fee (OHA) only will be paid, not a cracked trial fee.
115. Alternatively, when a jury is discharged and the case is adjourned for a retrial, if the case is then listed and the prosecution offers no evidence (or the defendant enters acceptable guilty pleas), a cracked trial fee will be paid.
116. An uplift is payable for each additional defendant (see paragraphs 92-98).
117. Following a PTPH where a not guilty plea(s) has been entered, the case is adjourned for trial and the defendant changes his plea to guilty on the same day, only a guilty plea fee will be paid (not a cracked trial fee).
118. In circumstances where the prosecution offers no evidence administratively and the acquittal is announced in open court without either party or their legal representatives being present, the cracked trial fee should be paid to the advocate originally instructed (if the case was previously adjourned for trial by the Court). This procedure can only be used where the defendant has previously entered not guilty pleas to the indictment.

Effective Trial

119. The standard or enhanced base fee is paid for day one of a trial and is determined based on the number of pages of evidence served in the case. The fees for Effective Trials are set out in annex 3.

120. A trial daily fee (TDF) is payable for each day the trial advocate, or a stand-in, attends an effective trial on the second and subsequent days of the trial.
121. An effective trial is defined as the jury having been sworn and evidence called or read. The calling of evidence is defined as a witness being called, a statement being read, or an admission being agreed and read after the conclusion of the counsel's opening speech to the jury. A case will not be paid as an effective trial if evidence has not been called. Once these criteria have been met, the case will always be paid as an effective trial.
122. The definition of a trial includes all days of the trial process, including days prior to swearing the jury. Days prior to the swearing the jury will be included as trial days provided:
- a) the case was listed 'for trial'
 - b) the days resulted in meaningful progress, either in court or where the parties have been given time, or taken time, to undertake work out of court
 - c) it led to a jury being sworn and evidence called, with the same advocate, within 7 calendar days, and
 - d) details of the meaningful progress are recorded on the Hearing Record Sheet.
123. The day the jury is sworn will generally be deemed to be the first day of trial, subject to the following provisions:
- a) Where a case is listed for trial and, prior to the swearing of the jury, the court considers matters relevant to the trial, such as admissibility of evidence (*voire dire*), disclosure, abuse of process or PII, those days are considered part of a continuous trial process. Should there be a gap in the trial process, before the jury is sworn, of more than 7 calendar days it will not be regarded as a continuous trial. In such circumstances the hearings prior to the break in proceedings will be remunerated as fixed fees.
 - b) Where jury empanelment takes place over one day or a number of days, the date on which the empanelment process begins will be deemed to be the first day of trial, provided the empanelment process leads to the swearing of the jury and evidence being called.
 - c) Where a jury is sworn but discharged and a subsequent jury is sworn on either the same day or within 7 calendar days, and evidence is then called or read, the case is considered to be one effective trial.

- d) If a case is listed for trial and there is meaningful progress towards the trial, for example, the court considers other matters such as admissibility of evidence (*voire dire*), disclosure, abuse of process or PII and the case then cracks before evidence is called or read, a cracked trial daily fee (CDF) will be paid for any days prior to the main hearing (the date on which the case cracked) and a cracked trial fee is payable for the main hearing date, subject to the mixed plea arrangements at paragraph 82-87
- e) Where an effective s28 hearing (YCEA 1999), or fitness to plead/stand trial hearing, or preparatory hearing has taken place, the trial process is deemed to have begun on the first date of that hearing and any resolution of the indictment is deemed to be part of the trial process in these circumstances.
- f) An effective s28 hearing starts the trial process and will be the first day of trial. Any subsequent days of the same trial process will be paid as trial daily fees (TDF).
- g) An effective fitness to plead / stand trial hearing starts the trial process where evidence is called or a determination of fitness to plead / stand trial is made. Any subsequent days of the trial process, whether as part of the trial on indictment or the determination hearing will be paid as trial daily fees (TDF).
- h) A hearing listed as a preparatory hearing, or declared as such by the judge, in a case that has previously been formally adjourned to trial, starts the trial process. All subsequent preparatory hearings are a continuation of the trial process and attract trial daily fees (TDF), as does the substantive trial hearing when it commences and evidence is called. Once a preparatory hearing has started the trial process, the main hearing payable will be an effective trial fee.
- i) Where a case is listed for trial but is adjourned/stood out to a subsequent day without any meaningful progress having taken place (as defined at paragraph 122b), this is not deemed part of the trial process and a fixed fee will be payable.

- 124. When any hearing attracting a separate fixed fee takes place on the same day as an effective trial main hearing there is no separate fee paid; the effective trial main hearing fee only is paid.
- 125. Non-sitting days cannot be included as part of the length of trial and do not attract a trial daily fee (TDF).
- 126. Once a trial has started, either by there being meaningful progress or the jury being sworn and evidence called or read before the jury, a case cannot attract a cracked trial fee in any circumstances.

127. No separate fee is payable to an advocate who stands in during the course of a trial on behalf of the trial advocate. All fees will be paid to the trial advocate and it is for the trial advocate to remunerate the stand-in.
128. An uplift is payable for each additional defendant (see paragraphs 92-98).

Section 28 Hearings (Youth and Criminal Evidence Act 1999)

129. In cases where there is a hearing at which a witness pre-records their cross-examination, this will be deemed to be day one of the trial if the hearing is effective and evidence is called.
130. The term s28 hearing refers only to the substantive hearings where cross-examination evidence is called, and does not refer to Ground Rules hearings which are dealt with in paragraph 132 and the fixed fees section of this manual.
131. Any subsequent effective s28 hearings will constitute consecutive days of the trial process.
132. The day the jury is sworn and all consecutive days the case is listed for trial will make up the remaining days of the trial process.
133. In advance of the s28 hearing, a Ground Rules hearing may be held to plan the parameters, nature and length of the questioning of the witness. Where these hearings are effective and the relevant orders are made the legal argument fixed fee will be paid. (PAH, PAW as appropriate). Ineffective ground rules hearings will be paid by way of a mention fee (OHA)
134. If a s28 Hearing is ineffective and the case is adjourned for another s28 hearing or to trial date the trial stood out fee will be payable (FNR/NEF as appropriate)
135. If an indictment is resolved at a s28 hearing by a guilty plea or the Crown offering no evidence or the indictment being stayed a cracked trial fee will be payable.

Retrials

136. For a retrial main hearing fee to be paid there must have previously been an effective trial main hearing. There can be a number of retrials in a case.
137. A retrial attended by the same advocate who attended the previous effective trial will be remunerated as follows:
- a) If the retrial starts within one calendar month of the end of the previous trial, the advocate will receive a reduction of **40%** of the main hearing fee that is calculated for the re-trial, save for the trial daily fees which will be paid in full

- b) If the retrial starts more than one calendar month after the end of the previous trial, the advocate will receive a reduction of **25%** of the main hearing fee that is calculated for the re-trial, save for the trial daily fees which will be paid in full

- 138. If a jury is discharged and another jury is sworn within 7 calendar days and evidence is subsequently called before the jury, the trial proceedings are considered to be one effective trial and the graduated fee for that length of trial will be payable. If there is a gap of 8 calendar days or more it is considered to be a retrial.
- 139. Time spent by the prosecution considering whether or not to proceed to a retrial is not included in the period that counts towards the calculation of the one month period. The one month period commences from the date the decision to proceed to a retrial is communicated to the court and the defence, whether this is at the end of the previous trial or at a later stage.
- 140. The trial is deemed to have concluded on the day that the jury is discharged.
- 141. Should a different advocate prosecute the retrial the full main hearing fee will be paid for that trial.
- 142. If the jury is discharged at the end of a trial and the case is adjourned for the prosecution to make a decision as to whether to retry the case, the case is then listed for the prosecution to offer no evidence (or for the defendant to enter acceptable guilty pleas), a Standard Appearance Fee (OHA) should be paid, not a cracked trial fee.
- 143. Alternatively, if the jury is discharged, the case is adjourned for a retrial and the case is then listed and the prosecution offers no evidence (or the defendant enters acceptable guilty pleas) a cracked trial fee will be paid.

Two part trials – Section 17 of Domestic Violence, Crime and Victims Act 2004

- 144. Trials conducted under this provision permit a Judge to hear evidence in front of a jury in the first stage of the trial and then subsequently hear evidence when sitting without a jury during the second stage. Regardless of whether the second stage follows on immediately from the first stage or at a later date, the retrial provisions do not apply. The length of each stage is combined and one effective trial main hearing will be paid.

Daily fees (TDF and CDF)

- 145. Under scheme E, daily fees fall into 2 categories:
 - i. Trial Daily Fees (TDF)
 - ii. Cracked Trial Daily Fees (CDF)

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Trial Daily Fee (TDF)

146. A trial daily fee is payable from day two onwards for each day the trial advocate or a stand-in attends an effective trial. The rates for trial daily fees are detailed in Annex 3.
147. In two trial advocate cases where one advocate does not attend for a day or days of the trial and there is no stand-in advocate, a daily fee is not payable for the day or days the advocate is absent.
148. Part of a day is counted as a full day and there is no additional payment if the court sits beyond 17:30 hours.
149. A daily fee will be paid for unelected cracked trial main hearings, in multiple cracked trial cases, in accordance with paragraph 106-107
150. If a stand-in advocate is used, the daily fee(s) is paid to the original advocate who is then responsible for reimbursing the advocate who attended in their absence on that day(s).
151. Conferences held on effective trial sitting days in the same case will not be remunerated separately.

Cracked Trial Daily Fee (CDF)

152. In circumstances where a case is listed for trial and there is a day or days of meaningful progress (as defined at paragraph 122b), which result in a cracked trial outcome, those days prior to the cracked trial main hearing date will be remunerated by way of a cracked trial daily fee (CDF).
153. This fixed fee is payable only if the cracked trial is the substantive main hearing, see mixed pleas at paragraph 82-87.
154. Defendant uplifts do not apply to cracked trial daily fees, unless the CDF is payable in respect of an unelected Cracked Trial main hearing (see paragraph 94).

OTHER HEARINGS

Newton Hearings

155. In any case on indictment where a Newton Hearing takes place, the proceedings will be treated as an effective trial.
156. The length of the trial is deemed to be the combined length of the main hearing (guilty plea or cracked trial) and the effective Newton Hearing. The main hearing date is the date the guilty plea was entered.
157. For a Newton Hearing to be 'effective', evidence must be called or read in relation to the issue being tried.
158. If the Newton Hearing is not effective, the advocate will receive the appropriate main hearing fee for the original hearing at which the guilty plea was entered (guilty plea or cracked trial fee) and the appropriate fee for the ineffective Newton hearing; this will usually be an ordinary sentence fee (SHR) or, if sentence is adjourned, a standard appearance fee (OHA).
159. The graduated fee will be calculated using the appropriate rates for an effective trial.
160. The main hearing fee for an effective Newton Hearing is payable to the advocate who attended on the date the plea was originally entered (i.e. the main hearing date). If a different advocate attends the Newton hearing, it is for the original advocate to reimburse the advocate who attends the Newton Hearing as a stand-in.
161. The GFS does not allow for a Newton Hearing in a Committal for Sentence (see paragraphs 207)

Fitness to Plead Hearings and Determination Hearings

162. If there is a hearing to determine the question of whether the defendant is fit to plead or to stand trial, the case will fall within the appropriate offence class for the offence on the indictment or within class D whichever the advocate elects.
163. Should a hearing be held to determine the question of whether the defendant is fit to plead or to stand trial (a "fitness hearing"), the proceedings will be remunerated as an effective trial main hearing and the length of the "fitness hearing" will be added to either:
 - a) the length of the hearing where the question whether the defendant committed the act or made the omission charged is determined; or
 - b) the length of any subsequent main hearing on indictment

Restriction Order under S41 Mental Health Act 1983

164. Any case in which a restriction order is made under Section 41 of the Mental Health Act 1983 shall fall within offence category 'A'.
165. Such orders may be made across a range of offences where a hospital order is imposed on an offender who is considered to present a danger to the public.
166. It is analogous to a sentence of life imprisonment and the weight of the case is reflected by such hearings being placed in offence category 'A'.

Preparatory Hearings (Section 29 of the Criminal Procedures and Investigations Act 1996)

167. If a case is listed for an effective preparatory hearing, this hearing will be regarded as the start of an effective trial and will be the main hearing date of the effective trial
168. Any subsequent effective preparatory hearing will also count towards the length of the trial.

FIXED FEES

Table of Fixed Fees

169. The table at annex 4 sets out the Table of Fixed Fees with the amount payable and their respective codes.

Plea and Trial Preparation Hearing (PTPH) and Further Case Management Hearings (FCM)

170. This fee is payable to the advocate in any case that is listed as a PTPH or FCMH except in the following circumstances:
- a) Where a bench warrant is issued, a standard appearance fee will be paid (OHA)
 - b) Where the defendants enters acceptable guilty pleas, the prosecution offers no evidence or the indictment is quashed / stayed, a guilty plea main hearing fee will be paid
171. An uplift is payable for each additional defendant (see paragraphs 92-98).
172. A case uplift does not apply and only one fee will be paid where two or more cases are heard at the same time.
173. In circumstances where there is more than one defendant and some defendants enter acceptable guilty pleas or no evidence is offered against them and some defendants have an effective PTPH, the advocate can claim a guilty plea main hearing fee in respect of the defendants who have entered acceptable guilty pleas or have had no evidence offered against them and a BPD fixed fee can be paid in relation to the defendants where an effective PTPH has been held.
174. If, at a PTPH, the prosecution asks for time to consider a plea offered and the case is relisted on another date for the plea to be taken and the pleas are accepted, the advocate will be paid a guilty plea fee and not a cracked trial fee.
175. There is a principle that there must be an indictment for there to be a GFS case and a main hearing fee to be payable. If, at a PTPH hearing the Crown discontinues the matter before the indictment is signed or the case is served, the case does not fall within GFS. In such circumstances a PTPH fee would be paid. If a matter is discontinued at a hearing prior to the PTPH a mention fee should be paid. Should the advocate consider that, due to the exceptional circumstances of the case, the fixed fee does not provide fair and reasonable remuneration for the work done he/she can apply in writing for the hours of preparation to be paid using the GFS hourly rate. The GFS hourly rate applicable to the advocate instructed will be applied to any

reasonable hours of preparation. Payment for hours of preparation will only be made upon production of detailed electronic work records.

Compliance Hearings

176. Compliance hearings will be remunerated by the OHA fee.
177. An uplift is payable for each additional defendant.
178. A case uplift does not apply and only one fee will be payable where two or more cases are heard at the same time.
179. If a main hearing occurs at a compliance hearing the OHA fee will not be payable.

Ordinary Sentence Hearings (SHR)

180. A sentence fee will only be paid for a sentence hearing where the advocate opens the facts of the case. If the facts of the case are not opened, only a standard appearance fee (OHA) will be paid.
181. A sentence hearing that takes place at the same time as a confiscation hearing attracts both an 'ordinary' sentence fee (SHR) and the half or full day confiscation fee.
182. A sentence hearing that lasts for longer than a day attracts a sentence fee for each day.
183. No separate fee is payable if the sentence hearing is part of the main hearing.
184. If a defendant is sentenced on more than one indictment at the same time only one fee is payable.
185. Should an ordinary sentence (SHR) and a deferred sentence (DSE) be heard at the same time, only a DSE will be paid.
186. The imposition of an Anti-Social Behaviour Order (ASBO) at the time of sentencing is remunerated as part of the sentence fixed fee, whether the application is contested or not.
187. An uplift is payable for each additional defendant (see paragraphs 92-98).
188. If a case is listed for sentence and the result of that hearing is that sentence is deferred, the advocate is entitled to the ordinary sentence fee (SHR) for that hearing and the deferred sentence fee (DSE) when sentence is finally passed.

Deferred Sentence (DSE)

189. If a case is listed for sentence and sentence is deferred by the court for 3 or 6 months, the advocate is entitled to the ordinary sentence fee (SHR) for that hearing and the deferred sentence fee (DSE) when sentence is finally passed.
190. The reference in this section to deferred sentences only applies to cases on indictment therefore where a case is committed for sentence and sentence is deferred a Committal for Sentence fixed fee (CSE) would be paid for the hearing where the sentence was deferred **and** another (CSE) fixed fee would be paid at the hearing where the defendant is finally sentenced.

Trial 'Stood Out' (NEF)

191. A 'trial stood out' fee (NEF) is payable when a case is listed for trial, a s28 hearing (YCEA 1999) or a Newton Hearing, and adjourned to a later date. Defendant uplifts do not apply.
192. If the defendant does not attend the trial and a warrant is issued, the trial stood out fixed fee code should be used, if the trial is adjourned.

Standard Appearance Fee (OHA)

193. This fee is payable in the following circumstances:
- a) Any hearing (subject to subsection c) which is unable to proceed and is adjourned
 - b) Cases listed for mention
 - c) Cases listed for any hearing other than a trial where a warrant is issued
 - d) Application for Custody Time Limit extensions
 - e) Cases listed for Pre Trial Review
 - f) Bail act offences
 - g) Compliance hearings
194. An uplift is payable for each additional defendant (see paragraphs 92-98).
195. A case uplift does not apply, however, and only one fee will be payable where two or more cases are heard at the same time.
196. If a number of linked cases / defendants are heard at the same time and one of those cases / defendants attracts a main hearing fee or another fixed fee, no standard appearance fee is payable in addition.

Appeals against Conviction (ACV), Appeals against Sentence (ASE), Committals for Sentence (CSE), Breaches of Crown Court Orders (BRE), Contempt of Court Proceedings (ASE)

197. The following fixed fees are payable for effective hearings in the following circumstances:
- a) Appeals against sentence (ASE) – the hearing of the appeal
 - b) Appeals against conviction (ACV) – the hearing of the appeal
 - c) Committal for sentence (CSE) – the date(s) the facts are opened
 - d) Breach of Crown Court order (BRE) – the hearing where the facts are opened
 - e) Contempt of Court proceedings (ASE) – the hearing where the contempt issue is dealt with
198. A case uplift is payable for each additional fixed fee under this section which is heard at the same time.
199. If a case under this section is heard on the same day as a main hearing then a case uplift applies and the fixed fee will not be paid (see paragraph 79).
200. An uplift is payable for each additional defendant (see paragraphs 92-98).
201. The same fixed fee is payable for each day if the case is part heard overnight or the advocate can apply at the end of the case to have the fee assessed ex post facto (see paragraph 206).
202. A Standard Appearance Fee (OHA) is payable for any non-effective hearing under this section.
203. If a case is listed for a committal for sentence and the result of that hearing is that sentence is deferred, the advocate is entitled to the committal for sentence fee (CSE) for that hearing and a further committal for sentence fee (CSE) when sentence is finally passed.
204. Where a defendant is sentenced on the same day as a confiscation order is made, the advocate will be entitled to the committal for sentence fee (CSE) and to the appropriate confiscation hearing fee.
205. Contempt of Court proceedings in respect of a contempt in the face of the Crown Court should be paid using the Appeal against Sentence fixed fee code (ASE)
206. Should the advocate consider that, due to the exceptional circumstances of the case, the graduated fixed fee does not provide fair and reasonable remuneration in a committal for sentence or an appeal against conviction and/or sentence and contempt of court proceedings he can apply in writing for the hours of preparation to be paid using the GFS hourly rate. The GFS hourly rate applicable to the advocate instructed will be applied to any reasonable hours of preparation. The GFS fixed fee will be applied to the main hearing. Payment for hours of preparation will only be made upon production of detailed electronic work records.

207. In a committal for sentence, where a Newton Hearing is heard in the Crown Court, the case cannot be paid under GFS and the fees will be assessed as at paragraph 206 above.

Disqualified Driver – Applications (ASE)

208. Where an advocate is instructed to assist the Judge in an application to have a disqualification reduced or removed, the appeal sentence fixed fee code should be used (ASE).

Legal argument hearing fee (PAW/PAH) – Abuse of process hearings, other legal argument hearings including severance and joinder applications, Voire Dire and Ground rules Hearings (Youth Justice and Criminal Evidence act 1999)

209. Effective abuse of process hearings and other legal argument, including severance and joinder applications, voire dire and Ground Rules hearings (Youth Justice and Criminal Evidence Act 1999) attract a fixed half day (PAH) or full day (PAW) fee. Should a legal argument hearing take place and a main hearing result on the same day, only the main hearing fee is payable for that day; the fixed fee is not paid in addition.
210. The fixed fee is enhanced in a case where the trial lasts more than 10 days.
211. An uplift is payable for each additional defendant (see paragraphs 92-98).
212. The fixed fee is payable where there is a hearing as follows:
- a) a voire dire
 - b) to determine the admissibility of evidence
 - c) to stay proceedings
 - d) a formal section 8 application to determine whether material should be disclosed
 - e) for a witness summons for disclosure of third party material
 - f) for the indictment to be severed or indictments to be joined
 - g) PII hearing
 - h) Ground Rules hearing (YCEA 1999)
213. If a case is listed because the prosecution is alleged to have failed to comply with an order for disclosure (not a formal section 8 application), a standard appearance fee will be paid (OHA).

Third Party Hearings (PAW/PAH)

214. Should an advocate be required to attend a hearing as an observer, or to assist the Court (e.g. third party proceedings between the defence and social services), a half or full day fee will be payable (PAW/PAH).

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215. An uplift is payable for each additional defendant (see paragraphs 92-98).

Full and Half Days

216. A full day is a hearing that commences before the luncheon adjournment and finishes after the luncheon adjournment.

217. A half-day is a hearing that commences and finishes before the luncheon adjournment or starts after the luncheon adjournment.

218. The start time of the hearing as shown on the court list is irrelevant when calculating the length of any hearing. Only the actual sitting times apply. An application to adjourn a hearing for more time does not constitute the start of the hearing.

Bad Character and Hearsay applications

219. Should the advocate be required to draft an application relating to Bar Character or Hearsay, a fixed fee will be payable in respect of each application. Defendant uplifts do not apply.

220. This fee is only payable in respect of the drafting of new applications and not payable for the consideration of existing documents or where making minor amendments.

Confiscation Hearings

221. Proceedings in the Crown Court which relate to POCA restraint (as opposed to POCA confiscation) do not fall to be paid under the GFS. Such applications will usually attract a mention fee (OHA) and this should be made clear when the advocate is instructed (see paragraphs 20-22).

222. The fees payable in confiscation proceedings are set out in annex 5.

223. Where the pages of confiscation material relied upon number 50 or less, the advocate will be paid fixed fees for each day or half day of the confiscation hearing. These fees are set out at table 1 of annex 5 and include all preparation.

224. Where the confiscation material relied upon runs to more than 50 pages, the fees are banded according to the number of pages. The fees set out in table 2 of annex 5 will be paid for the first day of the confiscation hearing and include all preparation. For any subsequent days or half days, the fees at table 1 should be applied.

225. Where the confiscation material relied upon exceeds 1,000 pages, the rates set out in table 2 for 750 to 1,000 pages should be used for the first day of the confiscation hearing. An additional payment may be made using the hourly rates set out in table 3 of annex 5 to compensate the advocate for work actually done on those pages in excess of 1,000.
226. Applications for additional payments should be made in writing and must be supported by detailed records of all work done in relation to the confiscation proceedings and should identify that work which was done in relation to the pages in excess of 1,000. Applications for additional payments which do not meet this standard will not be considered. In any hearing where there are in excess of 1,000 pages, the fees at table 1 will be used to remunerate the advocate for the second and subsequent days or half days.
227. Advocates will be required to keep detailed work records in all confiscation cases. The records, ideally in electronic format, should record the date, the details of the task undertaken and the time spent using the 24 hour clock. For example:
- | | | | |
|---------|--|----------------|-------------|
| 24.8.19 | Reading and considering S.16 statement | 19:00 to 21:30 | 2hrs 30mins |
|---------|--|----------------|-------------|
228. The fixed fees set out in tables 1 and 2 of annex 5 apply irrespective of the number of defendants involved in the confiscation hearing. No defendant uplifts apply.
229. The fixed fees set out in tables 1 and 2 apply irrespective of the number of cases which are heard at the same time. No case uplifts will apply. The number of pages relating to each application heard at the same time will be combined for the purposes of determining the page count with the usual proviso that the same page will only be counted once.
230. Wasted preparation does not apply to confiscation proceedings.
231. Any hearings, such as Mentions, which take place before or after the confiscation hearing will be attract the existing fixed fee rates set out in annex 4.

Pages

232. For the purposes of this section, a page of confiscation material is defined as:
- a) the Section 16 statement (**1**) served and relied upon by the prosecution for the purposes of the confiscation hearing together with any attached annexes
 - b) any other statement or document referred to in the section 16 statement which:
 - i. was served 'in evidence' (either with the original bundle or with a written notice of additional evidence) in respect of the offence(s) on the indictment, or

¹ Or a similar statement served under section 2 of the Drug Trafficking Act 1994 or under Section 71 of the Criminal Justice Act 1988

- ii. is specifically referred to, but not served with, the section 16 statement, or
- iii. the prosecution states it intends to rely on at the hearing

- c) Any written report of a defence expert. However, any documents attached to the defence report, referred to therein or relied upon by the defence should not be counted.

233. Any page of material copied or referred to in the confiscation material will only be counted once for the purposes of determining the page count irrespective of the number of times it appears or is referred to.

Full and half day hearings

234. In cases with over 50 pages, the fees set out in Table 2 will be paid for the first day of the confiscation hearing regardless of the length of the hearing. Where the hearing lasts for more than one day, a half day or full day fee will be paid for the subsequent days.

235. Subject to paragraph 231 above, a full day hearing fee set out in table 1 will be paid where the hearing starts before and finishes after the luncheon adjournment.

236. Subject to paragraph 231 above, a half day hearing fee set out in table 1 will be paid where either the hearing starts and finishes before the luncheon adjournment or starts after the luncheon adjournment.

Confiscation generally

237. Where a defendant is sentenced on the same day as a confiscation order is made, the advocate will be entitled to an ordinary sentence hearing fee (SHR) or a committal for sentence fee (CSE) and to the appropriate confiscation hearing fee.

238. Where a defendant pleads guilty, is sentenced and a confiscation order is made on the same day, the advocate will be entitled to the guilty plea or cracked trial main hearing fee and the appropriate confiscation hearing fee. The page count for the main hearing must not include any POCA material.

239. To determine whether a full or half day hearing fee should be paid, only the length of the confiscation hearing should be counted not the combined length of the sentence or guilty plea hearing and the confiscation hearing.

Bench Warrants (BWA)

240. The Bench Warrant fee (BWA) previously payable where a warrant had not been executed within 3 months of it being issued is not payable under scheme E.

241. If a case is listed for trial when a warrant is issued a 'trial stood out' should be paid. If the case is listed for any other hearing when the warrant is issued, a 'standard appearance fee' (OHA) should be paid.
242. The fee paid to the advocate who attended when the warrant is executed will be determined by what happens at that hearing:
- a) If no other proceedings take place - the Standard Appearance Fee (OHA) is payable
 - b) If other proceedings take place - the fee for that type of hearing for example plea, sentence (SHR) is payable
243. Should a Bench Warrant be issued as a result of the non-attendance of the defendant and a Bail Act Offence is put to the defendant when he is subsequently arrested and appears before the court, the hearing will attract a Standard Appearance Fee (OHA) whether the Bail Act offence is admitted or contested.
244. If, however, the Bail Act offence is dealt with at the same time as a main hearing on the indictment or a fixed fee, the standard appearance fee will not be paid in addition to the main hearing fee or fixed fee.
245. Should a case be listed for an application by the prosecution for a bench warrant, the Standard Appearance Fee (OHA) is payable.

Bail Applications and Bail Variations (OHA)

246. Bail applications or Bail variation hearings are remunerated by a standard appearance fee (OHA).
247. Should more than one defendant in a case apply for bail at the same time, an uplift is paid on the OHA fixed fee in respect of each additional defendant.
248. Where a single defendant applies for bail at the same time on more than one indictment, only one fee is payable. Similarly, no additional fee is payable for a bail application which is made during a hearing for which another fee is payable.
249. If the case has been sent to the Crown Court but the defendant makes a bail application at the High Court the Graduated Fee Scheme applies and the fixed fee is payable (OHA).
250. Pre-sending bail applications heard by a Judge in Chambers can be paid at the conclusion of the hearing with the last hearing date recorded as the date of the application.

251. The fee can be paid as soon as the application has been heard. It is not necessary to wait until the conclusion of the case.

CALCULATED FEES

Hourly Rate Fee

252. This fee is payable for:
- a) Conferences
 - b) Views of the scene
 - c) Special preparation
 - d) Wasted preparation
 - e) Travelling time (conferences and view of the scene)
 - f) Advice in Unduly Lenient Sentence referrals, Terminating Rulings and Rape Acquittals
 - g) Viewing electronic material, (see paragraph 71b)
 - h) Exceptional committals for sentence, appeals and discontinued indictable only cases which are paid on an hourly rate basis
 - i) Consideration of unused material in excess of 3 hours
 - j) Consideration of PII material (see paragraphs 69-70 and 252)
 - k) Body Worn Video
253. The time payable will be rounded up to the next ¼ of an hour.

PII material

254. Pages of sensitive unused material considered by the advocate on the instruction of CPS in relation to a PII application will be remunerated by way of time reasonably spent viewing that material upon production of detailed work records (see also paragraph 69-70). The time should be entered in 'other' calculated fee.

Conferences

255. Conferences are only payable where the conference was held with the knowledge and agreement of the CPS.
256. A meeting of the advocates in the case, whether they are external advocates or Crown Advocates with no other parties present, does not constitute a conference and should not be paid as such.
257. The fee will be based on the actual time, in hours and minutes, spent by the advocate undertaking the conference and paid at the appropriate hourly rate depending on the category of the advocate and the length of the trial. Each conference should be recorded separately.
258. The advocate can also claim reasonable travel time and travel expenses, where incurred.

259. Conferences held on a day when the advocate is in receipt of a main hearing fee (guilty plea, cracked trial or effective trial) for the same case will not be remunerated separately.

Views of the Scene

260. In cases where it is reasonable for the advocate to visit the scene of the offence, a separate payment will be made to the advocate.
261. The fee will be based on the number of hours and minutes reasonably spent by the advocate undertaking the view and paid at the appropriate hourly rate for the category of that advocate.
262. The advocate can also claim reasonable travel time and travel expenses, where incurred.

Special Preparation Fee

263. This provision only relates to cases on indictment in the Crown Court. All applications must be referred to the Court Business Unit, if payment is being considered, prior to final approval.
264. An hourly rate fee is allowed in any case on indictment in the Crown Court in respect of which a graduated fee is payable where the case meets the following criteria:

it has been necessary for the advocate to do work by way of preparation substantially in excess of the work normally done for cases of the same type and because the case involves a very unusual or a very novel point of law or very unusual or a very novel factual issue. The work done must relate to the very unusual or very novel point of law or the very unusual fact in the case.

265. Only the hours worked in relation to the novel issue or point of law can be considered for payment. For this reason it is necessary for the advocate to make a formal application detailing how the work actually done meets the criteria. This application should be accompanied by detailed work records of all work done in the case.
266. The time taken to research the law in respect of the case is included in the graduated main hearing fee. The advocate is assumed to be familiar with the current and substantive and procedural law in the field in which he holds himself out as practising). The CPS only instructs criminal law specialists therefore prosecuting advocates will not be remunerated additionally for researching the criminal law. Advocates dealing with criminal cases may not regard themselves as fully equipped to deal with matters arising under specialist legislation governing for example pollution, consumer credit or planning.

267. The test as to whether a particular matter is very novel or very unusual is whether it is very novel or very unusual in criminal cases generally and not whether it is to an individual advocate. *“Mere volume of paper, necessitating additional preparation, cannot amount to justification for a special preparation fee”.*
268. In relation to the concept of a very unusual or novel point of law this means - *“a point of law which either has never been raised or decided (novel) or which is outwith the usual professional experience (very unusual).”* A very unusual factual issue is *“a factual issue which is outwith the usual professional experience.”*
269. The amount of special preparation fee will be calculated from the number of hours of preparation which relate to the very novel or unusual matter, using the rates appropriate to the category of the advocate.
270. Work undertaken in reviewing substantial amounts of unused material does not in itself constitute special preparation.
271. Time spent considering a transcript of a previous trial cannot amount to a very unusual or novel factual issue.
272. Scheme E does not allow for a special preparation fee to be claimed or paid in a GFS case with over 10,000 pages.

Wasted Preparation Fee

273. This provision only relates to cases on indictment in the Crown Court.
274. This provision applies where the advocate has undertaken preparation work on a case that falls within the provisions of the GFS, but has to return the brief before the main hearing.
275. A wasted preparation payment will also be considered in two advocate cases where one advocate does not attend the main hearing. However, where the absent advocate is in receipt of a main hearing fee in the same case, wasted preparation will not be considered.
276. In the normal way, the principle that payment will not be made more than once for the same work, save in very exceptional circumstances, is applied.
277. A fee may be considered when the brief has been returned in one or more of the following circumstances:
- a) Where the advocate has two or more cases listed in different courts, subject to providing written evidence that they have taken steps to rectify the problem, e.g. by

contacting the CPS to agree the action to be taken. Written evidence should consist of a statement by the advocate setting out details of when instructions were accepted, when the case was warned or fixed or what steps were taken to avoid a listing conflict;

- b) If the fixture is moved by the court in spite of the advocate's objections
- c) If the advocate withdraws from the case with the leave of the court due to professional embarrassment
- d) Where the brief is removed from the advocate
- e) Where the advocate has a public duty e.g. sitting as a recorder

278. The fee will only be paid if the following criteria have been met:

- a) The advocate must have undertaken 8 or more hours preparation work on the case
- b) In jury trials the hearing must have lasted 5 days or more, **or** in a cracked trial the prosecution evidence must have exceeded 150 pages
- c) A wasted preparation fee is **not** payable in a case which results in guilty pleas
- d) The fee will be based on the number of hours of preparation that are accepted as having been reasonably undertaken, paid at the appropriate hourly rate for the grade of advocate instructed
- e) In considering whether the hours are reasonable, account should be taken of all the relevant factors including the category of offence involved, the complexity of the case in terms of the number of pages of prosecution evidence and at what point the brief was returned in advance of the main hearing (it may not be necessary for the advocate to have undertaken substantial preparation work where the brief in a straightforward case was returned some weeks before the main hearing)
- f) The advocate claiming this fee should provide a written application to support the claim accompanied by detailed work records. The application should address the criteria set out in this paragraph
- g) The application should include copies of relevant documents and details of the dates when the brief was received and returned or details of the hearing the advocate was unable to attend and when any abortive work was undertaken and, if appropriate, the reason why it was undertaken at that time

- h) The amount of wasted preparation fee will be calculated from the number of agreed hours of work properly carried out, using the rates set out for hourly fees as appropriate to the category of advocate
- i) The fee will only be considered at the conclusion of the case

DVD and Audio/Video Tapes (excluding electronic material – see paragraphs 71-72)

279. The following tapes and discs which are served in evidence are included as part of the base fee and will not be remunerated separately:

- Defendant interviews
- Evidence in Chief of a prosecution witness
- 999 calls

Travelling and Hotel Expenses

280. Reasonable travelling expenses will be paid where the advocate is instructed to appear in a court which is further than 25 miles (40 kilometres) from chambers.

281. The journey will be deemed to start from chambers unless the actual starting point is nearer e.g. from home.

282. Travel expenses will be remunerated at the standard fare rate for travel by public transport. Mileage will be paid at the CPS public transport rate.

283. Hotel expenses will be considered where the journey time is more than one hour and 30 minutes from chambers or if the reviewing lawyer deems it appropriate for hotel expenses to be paid. Hotel expenses must be pre-authorized and be supported by receipts when the claim is made. The CPS Travel and Subsistence rates will be applied.

Travel Time

284. Travel time will not be paid for travel to and from court in any circumstances.

285. Travel time will be paid for reasonable time spent travelling to and from a conference or view of a scene. Travel time will be calculated from chambers unless the actual starting point of the journey is nearer.

ADVOCATES

Queen's Counsel and Leading Juniors

286. The GFS provides for payments to Queen's Counsel and leading juniors. The rates are set out at annexes 3, 4 and 5.
287. There is no provision under the CPS GFS to pay enhanced fees to a junior advocate prosecuting alone where the defendant is represented by Queen's Counsel and/or two counsel. Accordingly, the prosecuting advocate will be paid as a junior alone.

Treasury Counsel

288. For the purposes of the scheme, Senior Treasury Counsel will be remunerated as Queen's Counsel and Junior Treasury Counsel will be remunerated as a junior advocate.

Noting Junior

289. A daily fee of £109 is payable to an advocate, who is not briefed in the case, but who takes a note of the proceedings.
290. The fee is payable for all or part of a day.
291. The fee is generated by recording the fact that the case was a trial (6), the number of days the Noting Junior attended the trial and the Advocate Type F.

Stand in counsel

292. A daily fee is paid for the advocate who attends or 'stands in' for the advocate who conducts the trial
293. The Trial fee is paid to the advocate who conducts the main hearing, who is then responsible for reimbursing daily fee(s) to the stand-in advocate who attended on that day(s).

Calculation of the Main Hearing Fee

294. Within each offence class there is a page threshold which determines whether the advocate receives a 'standard' base fee or an 'enhanced' base fee. The number of pages served in evidence determines whether the standard base fee or the enhanced base fee is payable. Pages up to and including the 'page cut-off' will be remunerated at the 'standard' rate and pages in excess of the 'cut-off' will be remunerated at the enhanced rate. Additionally, any case

prosecuted by a Junior advocate alone case will automatically be paid as an Enhanced Fee where the witness count exceeds 100, regardless of the number of pages of evidence.

295. The main hearing fee is made up as follows:

- a) **GUILTY PLEA** – the main hearing fee is calculated as follows:
 - 45% of the effective trial base fee (see annex 3);
 - Uplift for each additional defendant.

- b) **CRACKED TRIAL** – the fee is calculated as follows:
 - 100% of the effective trial base fee (see annex 3)
 - Uplift for each additional defendant
 - The payment of a cracked trial main hearing fee is restricted to only one cracked trial main hearing event where the cracked trial outcomes arise out of the a single core bundle of evidence (see paragraph 106)

- c) **EFFECTIVE TRIAL** – the fee is calculated as follows:
 - 100% of the effective trial base fee (see annex 3)
 - Daily rate fee (day 2 onwards)
 - Uplift for each additional defendant

MISCELLANEOUS

Timely Payment and Hardship Payments

296. GFS fees will be paid at the conclusion of the case, except in the following circumstances:
- a) Following a trial where sentence is adjourned for more than 4 weeks, upon application from counsel to the CPS, subject to the Deferred Sentence provisions
 - b) Where a case is adjourned for a retrial
 - c) After the conclusion of each effective trial in cases involving multiple trials, upon application from counsel to the CPS
 - d) Where a warrant has been issued but has not been executed within 3 months of the last hearing
297. Elected cracked trial main hearing fees cannot be paid before the conclusion of the case in any circumstances.
298. Hardship payments may be made in appropriate cases. Payment will not be made for sums of less than £5,000.00 and will only be made for work actually done and demonstrated.

Claim and Appeal Procedure

299. The claim and appeal procedure is detailed at Annex 6.

Level of Counsel

300. For CPS Management Information purposes, the level of each advocate remunerated under the GFS will be recorded and held on the payment system.
301. CPS staff and Bar Clerks will not be required to provide this information in relation to individual claims and payments.