

**GRADUATED FEE SCHEME**  
**MANUAL OF GUIDANCE**

**(NOVEMBER 2005)**  
**Amended Jul 08**

**CROWN PROSECUTION SERVICE**  
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# **CROWN PROSECUTION SERVICE GRADUATED FEE SCHEME**

## **MANUAL OF GUIDANCE**

### **BACKGROUND**

The Graduated Fee Scheme (referred to as the GFS in this document) came into force from 29<sup>th</sup> October 2001 and applies to all cases committed, transferred or sent to the Crown Court from and including that date and are identified as Scheme A. The Scheme has since been revised on 3<sup>rd</sup> October 2005 and is identified as Scheme B and applies to all cases committed, transferred or sent to the Crown Court from and including that date

Scheme B extends the criteria from Scheme A to cover all trials estimated to last up to 40 days in court and also applies to all guilty pleas, cracked trials, appeals and committals for sentence.

There will be a very small number of cases that are estimated to last for over 40 days in court where the advocate's fees will be managed under High Cost Case principles or Very High Cost Case principles in Phase 1 Areas.

All offences in the criminal code are placed in an offence group that attracts a fee for each piece of work emanating from that case. The advocate selects the count in the indictment and therefore the offence group upon which the fee for the case will be calculated. The fee payable for each piece of work is laid down by the scheme and is not discretionary. The result is a mathematical calculation.

Cases that were committed, transferred or sent to the Crown Court before 3<sup>rd</sup> October 2005 are subject to the provisions of Scheme A for the life of the case and should continue to be paid on the FIST version 1.

It follows, therefore, that the two schemes will be operating side by side until the Scheme A cases are phased out. The same scheme must be applied throughout the life of a case. Where, however, linked cases share the same main hearing, but fall under scheme A and B, counsel must elect the principal case for which he will be remunerated. Uplifts for the additional cases will fall to be paid in accordance with the scheme applicable to the principal case.

Any case where three TRIAL advocates are briefed will not fall to be paid under GFS and should be paid under either the High Cost or Very High Cost Case schemes.

In Committals for Sentence and Appeals, under Scheme A, Counsel can make an application, in writing, to have the fees assessed ex-post facto if he believed that the fixed fee was inappropriate. That remains the position under scheme B.

The electronic version of the MOG is available on the Intranet. Go to "Manuals" section, click on the "Counsel Fees" link, then go to the Manual of Guidance.

## **THE CROWN PROSECUTION SERVICE GRADUATED FEE SCHEME**

1. The Scheme sets out the following: -
  - (i) defines a case as one indictment, which can include one or any number of counts;
  - (ii) allows for more than one defendant.;
  - (iii) allows fees for Queen's Counsel, other Leaders, Junior Counsel and Solicitor Advocates.
  - (iv) sets out fees for cases not tried on indictment but heard at the Crown Court.
2. The majority of cases prosecuted by advocates in the Crown Court fall within the Graduated Fee Scheme. These include: -
  - jury trials where at the PCMH it is estimated that the case will last 40 days in Court or less;
  - cases that do not proceed to trial e.g. defendant pleads guilty or the Prosecution offers no evidence.

In a GFS Cost Judge ruling (*R v Gill*) the original trial ended with the jury unable to make a decision. At the re-trial, the defendant pleaded guilty. The National Taxing Team decided the original trial should be paid under GFS but that the re-trial, which cracked and fell out of GFS, should be paid ex post facto. Counsel appealed this decision but the Cost Judge rejected the appeal and upheld the decision of the determining officer.

The Cost Judge ruled that there is nothing wrong “in having two separate bases of assessment”. It is no longer necessary, if one part of a case falls out of GFS, for the Area to take the whole case out of the scheme and negotiate the fees. They can now pay the bulk of the case under GFS and restrict the negotiations to the part that falls out.
3. Cases where at the PCMH it is anticipated that the trial will last for more than 40 days, are excluded from the GFS and dealt with under the arrangements for High Cost Cases or Very High Cost Cases. There are provisions in the GFS for cases where it was estimated at the PCMH that the trial would last for 40 days or less but in fact lasted over 40 days..
4. The Graduated Fee Scheme also applies to the following cases: -
  - Appeals against Conviction;
  - Appeals against Sentence;
  - Committals for Sentence.

5. The GFS does not apply in the following circumstances:
- (i) Trials estimated to last more than 40 days;
  - (ii) Any case involving more than two TRIAL advocates;

NOTE: where Disclosure Counsel is instructed (but is not acting as trial counsel) in addition to 2 trial counsel, both trial counsel would be paid under GFS and the Disclosure Counsel would be paid on a NOFF in accordance with High Cost Case or Very High Costs Case provisions, whichever applies.

- (iii) Preliminary hearings.

## 6. TABLE OF OFFENCES

- (i) The Scheme provides a Table of Offences that places offences into class A - I. *See Annex 1.*
- (ii) The Graduated 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 proceedings**. It is likely to be the main or most serious count on the indictment however it is for the **advocate** to select the offence category upon which the graduated fee will be based.
- (iii) Any offence that is not within a specific offence group will fall within offence category 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.
- (iv) Conspiracy, incitement and attempts of offences are treated the same as the substantive offences would be.
- (v) In the event of the advocate wishing to re-negotiate the offence category the Court Service should be consulted in order to achieve parity of the fee paid to the prosecution and defence advocate.
- (vi) There are certain offences that fall into Class C or F, unless the value is greater than £30,000, in these circumstances the case falls into Class B or G. See paragraph 10.

7. The elements that decide the graduated fee to be paid are as follows:

- (i) **JURY TRIALS**
  - Base fee
  - Refresher
  - Daily Uplifts
  - Evidence Uplift (pages of prosecution evidence)
  - Witness Uplift (number of prosecution witnesses)
  - An uplift is applicable for each additional defendant
  - A page limit of 10,000 (Refer to paragraph 53 (ii))

**Note:** A trial is deemed to have started when a jury is sworn and evidence is called.

(ii) **CRACKED TRIALS**

- Base fee
- Evidence Uplift (pages of prosecution evidence) - uplifts per page for pages 11-50, 51-100 and over 100
- An uplift is applicable for each additional defendant.
- An uplift is applicable for each witness if the trial cracks in the last two thirds.

(iii) **GUILTY PLEAS**

- Base fee
- Evidence Uplift (pages of prosecution evidence - uplifts per page for pages 11 - 50, 51 - 100 and over 100.
- An uplift is applicable for each additional defendant.

8. **BASE FEE**

The Base Fee is calculated from the offence group in which the principal count is listed. The offence groups are represented by the letters A to I;

- (i) The list of offences and the group into which they fall, is produced in alphabetical order at Annex 1;
- (ii) Where the indictment contains more than one count in differing classes, the advocate must select one offence and the fee is based on the offence group.
- (iii) When more than one case is heard at the same time eg a trial and a guilty plea, the advocate can select the case that is the **main hearing** and upon which the graduated fee will be based. It may be that a guilty plea in a high offence category provides greater remuneration than a trial matter in another category. All additional cases are remunerated with a case uplift of 20% of the Base fee of the *principal* case. *See paragraph 41*
- (iv) The Base Fee payable is dependent on the type of case:-
- Guilty Plea
  - Cracked Trial
  - Trial

and the category of advocate: -

- Queen's counsel
- Leading junior
- Junior counsel/solicitor advocate

- (v) The advocate can only claim for the constituents of the selected case, *i.e.* number of pages/witnesses, for the calculation of the graduated fee.
- (vi) The advocate can choose any offence group upon which to claim a fee as long as the indictment contains at least one offence from that group.
- (vii) For the purposes of the GFS the 'preparation' of a case is included in the base fee, such as: -

- reading the papers in the case;
- contact with defence representatives;
- written or oral advice (*but see Paragraph 8 viii*);
- researching the law,
- viewing unused material;
- preparation of written submissions, notices or other documents for use at the main hearing.

(viii) An exception to the above is the initial advice to the CPS Area, prepared by counsel instructed in the Crown Court proceedings on unduly lenient sentence which will be assessed and paid at the hourly rate according to the category of advocate.

## 9. INDICTMENT

- (i) The 'indictment' for the purpose of calculating a Graduated Fee is the indictment upon which the advocate carries out preparatory work and/or appears at the 'main' hearing.
- (ii) If counts have been severed, or if two indictments were committed together but dealt with separately, then there are two cases and each would attract a separate graduated fee.
- (iii) Where two or more indictments were committed/sent/transferred separately and then joined, this is treated as one case and would attract one graduated fee.

## 10. VALUE THRESHOLD for OFFENCES of DISHONESTY and ARSON

- (i) When the value of the property in specified offences of dishonesty and 'non-aggravated' arson that would normally fall to offence class F or C, exceeds £30,000; the case will fall to offence category G or B respectively.
- (ii) It will be for the claiming advocate to provide evidence to support the valuation. This may be in the form of extracts from the indictment or the statements. (The Court Service should be consulted to ensure a consistent response).
- (iii) Where the indictment is in the form of a 'specimen' count then only the value of that count will go towards the value of the case.
- (iv) Where the same property is covered by alternative counts such as theft/handling; the value of the property can only be counted once.
- (v) Offences that have been taken into consideration by the Judge upon sentence (TICs) shall not be taken into account when calculating the value.

## 11. REFRESHERS

- (i) A refresher is claimed when the main hearing of a jury trial lasts more than one day and is payable only for the second and subsequent days.

- (ii) Part of a day is counted as a full day and there is no additional payment if the court sits beyond 17.30 hours;
- (iii) The fee payable is determined by: -
  - the offence category;
  - the category of the advocate at the start of the main hearing.
- (iv) A refresher fee is not payable for any hearing that meets the criteria set out in paragraphs 28-33 when the full/half daily fixed fee should be paid. Where the hearing takes place after the jury has been sworn it is counted as part of the length of the trial.
- (v) Where any hearing takes place on the same day that the jury is sworn it is counted as part of the trial and no separate payment will be made.
- (vi) A daily refresher fee is paid for the advocate who attends or 'stands in' for the original advocate on a day (or days) after the first day of a jury trial.
- (vii) The refresher fee(s) is paid to the original advocate who is then responsible for reimbursing the advocate who attended on that day(s).
- (viii) Where a case has a leader and a junior advocate, one of whom does not attend for a day or days of the trial, nor is there an advocate standing in, then a refresher fee for that day is not payable. A length of trial uplift however *would* be payable to the advocate.

## 12. LENGTH OF TRIAL UPLIFT

- (i) A length of trial uplift is payable for the second and subsequent days of a jury trial.
- (ii) This fee is aligned to the base fee and is payable to the advocate who attended for the main hearing but not to the advocate who 'stands in' at any subsequent hearings.
- (iii) The length of trial uplift fee applies to a day or any part of a day.
- (iv) The fee payable is determined by:
  - the offence category;
  - the category of the advocate at the start of the main hearing.
- (v) Where there is more than one defendant a 5% uplift of each length of trial uplift is payable for the second and subsequent defendants.

*The tables at Annex 2- 4 set out the fees to be paid.*

### 13. EVIDENCE UPLIFT

- (i) An evidence uplift fee is payable for each page of prosecution evidence in the following cases: -
  - trial;
  - cracked trial;
  - guilty plea.
  
- (ii) The pages of prosecution evidence to be counted are: -
  - witness statements
  - notices of additional evidence
  - documentary and pictorial exhibits
  - defendant interviews and all other pages of exhibits even if not all relevant to the prosecution case
  - material considered for PII
  
- (iii) Only pages of evidence which form part of the prosecution case, with the exception of (viii) and (ix) below, should be counted.
  
- (iv) Part pages are counted in the same way as full pages.
  
- (v) Pages that are EXCLUDED are:-
  - title pages and lists of documents
  - pages of unused evidence i.e. evidence not disclosed to the court.
  - any pages NOT served as part of the prosecution case, with the exception of (viii) and (ix) below
  
- (vi) When a transcript has been expanded, either by the prosecution or the defence, because the one provided by the prosecution was deemed insufficient, the fullest transcript produced shall be included in the page count. The version that is in the committal bundle should be also counted.
  
- (vii) Any versions of a transcript that have been edited for the purpose of being put before the jury should not be counted.
  
- (viii) Material held electronically which is copied onto a DVD or CDROM, the images are not counted as pages . Any such material served as evidence, counsel should be paid for fair and reasonable time spent viewing the material .The hours recorded can be paid using the appropriate hourly rate.
  
- (ix) Where a Judge has ordered a transcript that, although provided to all parties, is not formally exhibited or served as NAE, this may be counted under this Section. A check should be made with the Court Service and if they are including these pages then it should be taken into account.
  
- (x) Transcripts of children's evidence adduced by way of video evidence should also be included in the page count.
  
- (xi) The fee is determined by:-
  - the offence category;
  - the category of the advocate.

14. **WITNESS UPLIFT**

- (i) A witness uplift fee is payable for each prosecution witness in a trial case.
- (ii) A witness uplift is not paid for a guilty plea or if the trial cracks in the first third.
- (iii) All prosecution witnesses are counted where their statements have been served as part of the prosecution case, including expert witnesses, but a witness may only be counted once. █
- (iv) The fee to be paid is determined by:-
  - the offence category;
  - the category of the advocate.

*The tables at Annex 2 - 6 sets out the fees to be paid in paragraphs 13 and 14.*

15. **MAIN HEARING**

The **main hearing** is defined as: -

- in respect of a case that goes to trial, the whole trial;
- in respect of a guilty plea the hearing where acceptable pleas are taken (or the case was disposed of);
- in respect of a cracked trial the hearing where acceptable pleas are taken (or the case is disposed of);
- in respect of an appeal against conviction or sentence, the hearing of the appeal;
- in respect of a committal for sentence; the sentencing hearing;
- in respect of proceedings arising out of an alleged breach of an order of the Crown Court, the final hearing.

If more than one case involving the same defendant is listed at the same time, the case uplift provisions detailed in Paragraph 41 will apply for cases other than the principal case.

16. **TABLE OF ANCILLARY FEES**

The table at *Annex 7* sets out the Table of Ancillary Fees with fees payable and their respective Codes

17. **PREPARATORY HEARINGS (Section 29 of the Criminal Procedures and Investigations Act 1996)**

- (i) Where a case is listed for an effective preparatory hearing this hearing will be counted as the first day of the trial.
- (ii) Any subsequent effective preparatory hearing will also count towards the length of the trial.

**18. PLEA AND CASE MANAGEMENT HEARING**

- (i) This fee is payable to the advocate in any case that is listed as a PCMH. A fee under this section would not be payable where the defendant pleads guilty or the prosecution offers no evidence. *See paragraph 19.*
- (ii) An uplift is payable for each additional defendant. *See paragraph 40.*
- (iii) A case uplift does not apply and only one fee will be payable where two or more cases are listed at the same time.

*Fee payable for PCMH - see table below*

<i>Hearing</i>	<i>Queen's Counsel</i>	<i>Other Leading Advocates</i>	<i>Junior and sole advocate</i>	<i>CODE</i>
<i>Case listed as PCMH</i>	<i>£188.00</i>	<i>£127.00</i>	<i>£100</i>	<i>BPD</i>

**19. GUILTY PLEA**

- (i) This fee is payable to the advocate where an acceptable plea of guilty is entered by the defendant OR the Prosecution offers no evidence OR the indictment is stayed.
- (iii) This fee is payable where the defendant enters a guilty plea at a hearing following one or more ineffective PCMH hearings at which the case had NOT been adjourned for trial (*see paragraph 22*)
- (iv) This fee is also payable if the defendant indicates that he wishes to enter a guilty plea or the Prosecution indicates that no evidence is to be offered at a Preliminary Hearing AND the indictment is drafted and signed AND a guilty plea is entered or the Prosecution offer no evidence. (*see paragraph 22*)
- (v) If there is an effective Newton Hearing after a guilty plea, the case does not attract and guilty plea fee (*see paragraph 35*)
- (v) An uplift is payable for each additional defendant. *See paragraph 40.*

*The fee payable is determined by the class of offence and counsel category - see Tables of Fees at Annex 5.*

**20. EFFECTIVE TRIAL**

- (i) An effective trial is a case listed for trial **where the jury has been sworn and evidence called**, or Preparatory Hearing(s) have taken place. (*See paragraph 17*)
- (ii) Where a case is listed for trial and the court considers other matters, such as (admissibility of evidence (voire dire), disclosure, abuse of process or PII, on a day or days **before** the jury is sworn, these whole days should not be counted towards the length of the trial for the calculation of the graduated fee. A fixed fee is payable. *See paragraphs 29-30.*

- (iii) However when any hearing attracting a separate fixed fee takes place on the same day as the main hearing (the Trial) there is no separate fee paid and the graduated fee for the trial is paid.
- (iv) Where a case is listed for trial and a jury is **not** sworn and as a result of a *voire dire* the defendant pleads guilty or the Prosecution offers no evidence, then the case is deemed to be a cracked trial and is paid accordingly.
- (v) An uplift is payable for each additional defendant. *See paragraph 40.*

*The fee payable is determined by the class of offence and category of counsel - see Table of Fees at Annex 2 to 4.*

## 21. **CRACKED TRIAL**

- (i) A cracked trial is any disposal of an indictment (other than an effective trial) on a day after an effective PMCH, where the defendant enters guilty pleas, or the prosecution offers no evidence or the indictment is stayed.
- (ii) At a PCMH where the prosecution or defence request further time to consider their position, the case is subsequently relisted and the defendant pleads guilty or the prosecution offer no evidence should be treated as a guilty plea.
- (iii) An uplift is payable for each additional defendant. *See paragraph 40.*
- (iv) The start date (the date the case is put into a list) and the end date (the first date of that list whether a fixture or warned list ) should be listed on the FIST for the calculation of fees purposes. If the case is not reached , those dates do not change.
- (v) For a cracked trial fee to be paid in any circumstances, the case must either crack on the day of the trial (*see point (vii) below*) or have previously been adjourned for trial.
- (vi) Any case which is listed for trial where there has not been a PDH / PCMH and the trial cracks **ON THE DAY OF TRIAL**, is deemed to be a cracked trial.
- (vii) When the jury are ‘hung’ at the end of a trial and the case is adjourned for the Prosecution to make a decision whether to retry the case, if the case is then listed for the Prosecution to offer no evidence, a Standard Appearance Fee (OHA) should be paid, not a cracked trial fee. Alternatively, when a jury are hung and the case is adjourned for trial, if the case is then listed and the Prosecution offer no evidence, a cracked trial fee would be paid.

*The fee payable is determined by the class of offence and category of advocate - see Table of Fees at Annex 5 and 6.*

## 22. **PRELIMINARY HEARINGS (Section 51 of the Crime and Disorder Act 1998)**

- (i) Preliminary Hearings do not fall to be paid under the Graduated Fee Scheme. Counsel should be paid a Standard Appearance Fee on a NOFF. The NOFF code to be used is PRE.
- (ii) If the defendant indicates that he wishes to enter a guilty plea or the Prosecution indicates that no evidence is to be offered at a Preliminary Hearing, AND the indictment is drafted and signed AND a guilty plea is entered or the Prosecution offer no evidence, the case is deemed to fall under the GFS and a guilty plea fee would be paid (*see paragraph 19*)

23. **MIXED PLEAS**

- (i) Where a case, with more than one defendant, is listed for trial and one or more defendant(s) plead guilty (or the prosecution offers no evidence) and a jury is then sworn on the same day; the advocate can elect the principal case.
- (ii) The advocate can select either the Cracked Trial or Jury Trial as the main hearing.
- (iii) Where the trial proceeds on the following or a subsequent day the advocate is entitled to claim both main hearing graduated fees.

24. **TRIAL 'STOOD OUT'**

- (i) This fee is payable when the case is listed for trial and adjourned to a later date upon an application by the prosecution or defence (NEF) OR by the Judge or Listing Officer OR the defendant fails to attend and a bench warrant is issued (FNR).
- (ii) An uplift is payable for each additional defendant except where marked \*\*.

*Fee payable for non-effective trials - see table below*

<i>Hearing</i>	<i>Queen's Counsel</i>	<i>Other Leading Advocates</i>	<i>Junior or sole advocate</i>	<i>CODE</i>
<i>Stood out upon app. by Pros. Or Def.</i>	<i>£116</i>	<i>£79</i>	<i>£55</i>	<i>NEF**</i>
<i>Stood out by Court OR Deft.DNA &amp;BW issued</i>	<i>£275</i>	<i>£187</i>	<i>£110</i>	<i>FNR</i>

25. **BAIL APPLICATION**

- (i) The Standard Appearance Fee is payable and is dependant on the category of the advocate.
- (ii) Where there is more than one defendant in a case applying for bail at the same time a separate fee is paid for each defendant.
- (iii) Where a defendant applies for bail at the same time on more than one indictment only one fee is payable.

- (iv) Where the case has been committed to the Crown Court but the defendant makes a bail application at the High Court the Graduated Fee Scheme applies.
- (v) The pre-committal bail applications can also be paid on a FIST with the last hearing date recorded as the date of the application.
- (vi) The fee for the bail application can be paid as soon as the application has been heard. There is no need to wait until the conclusion of the case.

*Fee payable for bail applications - see table below:*

<i>Queen's Counsel</i>	<i>Other Leading Junior</i>	<i>Junior or Sole Advocate</i>	<i>CODE</i>
<i>£116.00</i>	<i>£79.00</i>	<b><i>£46.50</i></b>	<b><i>BAP</i></b>

26. **STANDARD APPEARANCE FEE**

- (i) A Fixed Fee that is paid in the following circumstances:
  - any hearing (other than PCMH or Trial) which is unable to proceed and adjourned;
  - cases listed for mention.
- (ii) An uplift is payable for each additional defendant. *See paragraph 40.*
- (iii) A case uplift does not apply and only one fee will be payable where 2 or more cases are listed at the same time.
- (iv) No separate fee is payable if the appearance is heard at the same time as a main hearing.

*Fee payable for standard appearance fee - see table below:*

<i>Queen's Counsel</i>	<i>Other Leading Advocate</i>	<i>Junior or sole advocate</i>	<i>CODE</i>
<i>£116.00</i>	<i>£79.00</i>	<b><i>£46.50</i></b>	<b><i>OHA</i></b>

27. **BENCH WARRANTS**

- (i) The Bench Warrant fee (BWA) should only be paid if a warrant is not executed within 3 months of being issued;
- (ii) The fee should be paid to the advocate who attended court when the warrant was issued;
- (iii) If the warrant has not been executed within 3 months of being issued, counsel should be paid the BWA fee plus all other work done to that date;
- (iv) If a case is listed for trial when a warrant is issued a 'trial stood out NOT on application' fee (FNR) 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.
- (vi) The fee paid to the advocate who attended when the warrant is **executed** will be determined by what happens at that hearing;

- if no other proceedings take place - the Standard Appearance Fee is payable.
  - if other proceedings take place - the fee for that type of hearing i.e. plea, sentence is payable.
- (vii) Where a Bench Warrant is issued as a result of the non-attendance of the defendant, following GFS Cost Judge rulings (*R v Shaw & R v Despres*), the Cost Judge ruled that a breach of bail hearing was to be paid as either a guilty plea or trial graduated fee under offence class H depending on whether the breach was admitted (guilty) or contested (trial).

If a breach of bail hearing is heard at the same time as another “main hearing” (for example, the breach of bail hearing is heard at the same time as when the defendant pleads guilty to the offence) a 20% uplift to the basic fee of the “principal case” is paid.

- (viii) Where a case is listed for the issue of a bench warrant only - the Standard Appearance Fee is payable.

*Fee payable for bench warrant hearings- see table below:*

<i>Hearing</i>	<i>Queen's Counsel</i>	<i>Other Leading Advocate</i>	<i>Junior or sole advocate</i>	<i>CODE</i>
<i>App. For BW only &amp; executed w/I 3 months</i>	£116	£79	<b>£46.50</b>	<b>OHA</b>
<i>App. for BW only &amp; not executed w/I 3 months</i>	£250	£170	<b>£100</b>	<b>BWA</b>
<i>Listed for trial – BW issued &amp; executed w/i 3 months</i>	£275	£187	<b>£110</b>	<b>FNR</b>
<i>Listed for trial – BW issued &amp; not executed w/i 3 months</i>	£275 & £250	£187 & £170	<b>£110 &amp; £100</b>	<b>FNR &amp; BWA</b>
<i>Listed for other proceedings -other than PCMH - BW issued &amp; executed w/I 3 months</i>	£116	£79	<b>£46.50</b>	<b>OHA</b>
<i>Listed for other proceedings- other than PCMH - BW issued &amp; not executed w/i 3 months</i>	£116 & £250	£79 & £170	<b>£46.50 &amp; £100</b>	<b>OHA &amp; BWA</b>
<i>BW executed only</i>	£116	£79	<b>£46.50</b>	<b>OHA</b>
<i>BW executed - other proceedings take place</i>	<b>Pay the fee for the proceedings i.e. plea, sentence, etc according to category of advocate and class of offence.</b>			

28. **ADMISSIBILITY OF EVIDENCE HEARING (VOIRE DIRE)**

- (i) Where there is a hearing to determine the admissibility of evidence (voire dire) a fixed fee is payable for either a half or full day for an **effective** hearing. *See table at paragraph 30.*
- (ii) Where a hearing is held prior to the first or only day of the main hearing, it shall not be included in the length of the main hearing for the purpose of calculating remuneration).
- (iii) No separate remuneration will be made if the voire dire hearing is heard on the same day as the main hearing
- (iv) Where a case lasts more than 10 days, the fee shall be increased by a percentage uplift.
- (v) An uplift is payable for each additional defendant. *See paragraph 40.*

29. **SEVERENCE and JOINDER APPLICATIONS**

- (i) A Fixed Fee is payable for either a half or a full day for an **effective** hearing. *See table at paragraph 30.*
- (ii) Where a hearing is held prior to the first or only day of the main hearing, it shall not be included in the length of the main hearing for the purpose of calculating remuneration.
- (iii) No separate remuneration will be made if the abuse of process hearing is heard on the **same** day as the main hearing.
- (iv) Where a case lasts more than 10 days, the fee shall be increased by percentage uplift.
- (v) An uplift is payable for each additional defendant. *See paragraph 40.*

30. **DISCLOSURE - PUBLIC IMMUNITY INVESTIGATION HEARING**

- (i) A Fixed Fee is payable for either a half or full day for an **effective** hearing. . See table below.
- (ii) Where a hearing is held prior to the first or only day of the main hearing, it shall not be included in the length of the main hearing for the purpose of calculating remuneration.
- (iii) No separate remuneration will be made if the PII hearing is heard on the **same** day as the main hearing.
- (iv) Where an application is made of non-compliance of an order by the prosecution a Standard Appearance Fee should be paid.
- (v) Where the case lasts –more than 10 days, the fee shall be increased by percentage uplift in accordance with the table below.

- (vi) An uplift is payable for each additional defendant. *See paragraph 40.*

*Daily fee payable for Admissibility of Evidence, Abuse of Process Disclosure and PII:*

<i>Hearing</i>	<i>Full/Half Day</i>	<i>Queen's Counsel</i>	<i>Other Leading Advocate</i>	<i>Junior or Sole Advocate</i>	<i>Code</i>
<i>1 - 10 day trial</i>	<i>Full</i>	<i>£330.00</i>	<i>£250.00</i>	<i>£178.25</i>	<i>PAW</i>
	<i>Half</i>	<i>£185.00</i>	<i>£140.00</i>	<i>£99.50</i>	<i>PAH</i>
<i>11 - 40 day trial</i>	<i>Full</i>	<i>£495.00</i>	<i>£375.00</i>	<i>£267.45</i>	<i>PAW</i>
	<i>Half</i>	<i>£277.50</i>	<i>£210.00</i>	<i>£149.25</i>	<i>PAH</i>

**31. CONFISCATION HEARINGS**

- (i) A Fixed Fee is payable for either a half or a full day for an **effective** hearing made in accordance with the Proceeds of Crime Act 2002, or section 2 of the Drug Trafficking Act 1994 and section 71 of the Criminal Justice Act 1988. *See table at paragraph 32.*
- (ii) For the confiscation order to have proceeded, evidence must have been considered even if no order is subsequently made. If no application is ultimately made then a standard appearance fee or sentence fee is allowed.
- (iii) A hearing shall not be included in the length of the main hearing or of any sentencing hearing for the purpose of calculating remuneration.
- (iv) Where the trial lasts –more than 10 days, the fee shall be increased by percentage uplift in accordance with the table.
- (iii) An uplift is payable for each additional defendant. *See paragraph 40.*
- (iv) Proceeds Of Crime Act (POCA) hearings now fall within GFS. The codes DTW and DTH should be used to pay full and half day hearings.
- (v) The DTH and DTW codes include a payment for the number of pages included in the papers relating to the application for confiscation. The number of pages relating to the application should NOT therefore be added to the number of pages of evidence boxes on the FIST.

**32. CONFISCATION and SENTENCE HEARING**

- (i) A Fixed Fee is payable, for either a half or a full day, for an **effective** DTA Hearing and an **effective** Sentence fee whether heard on the same or separate days. *See table below.*
- (ii) A separate remuneration is payable when a Confiscation hearing and a Sentence hearing are heard on the same day as the main hearing and will not be included in the length of the main hearing.

- (iii) Where the trial lasts more than 10 days, the fee shall be increased by percentage uplift in accordance with the table below.
- (iv) An uplift is payable for each additional defendant. *See paragraph 40.*

*Daily fee payable for Confiscation and Confiscation and Sentence Hearing. - See Paragraphs 30 and 31.*

<i>Hearing</i>	<i>Full/Half Day</i>	<i>Queen's Counsel</i>	<i>Other Leading Advocate</i>	<i>Junior or Sole Advocate</i>	<i>Code</i>
<i>1-10 day case</i>	<i>Full</i>	<i>£330.00</i>	<i>£250.00</i>	<i>£178.25</i>	<i>DTW</i>
	<i>Half</i>	<i>£185.00</i>	<i>£140.00</i>	<i>£99.50</i>	<i>DTH</i>
<i>11-40 day case</i>	<i>Full</i>	<i>£495.00</i>	<i>£375.00</i>	<i>£267.45</i>	<i>DTW</i>
	<i>Half</i>	<i>£277.50</i>	<i>£210.00</i>	<i>£149.25</i>	<i>DTH</i>

### 33. THIRD PARTY HEARINGS

- (i) Where counsel is required to attend a hearing as an observer or to assist the Court eg third party proceedings between the defence and social services a half or full day fee will be payable. *(See table at paragraph 30)*
- (ii) An uplift is payable for each additional defendant. *See paragraph 40.*

### 34. SENTENCE HEARINGS

- (i) An 'ordinary' sentence hearing that has been **adjourned** to a day after the main hearing will attract a (lower) Fixed Fee.
- (ii) A sentence hearing that has been **deferred** under the provisions of the Powers of the Criminal Courts Act 1973 will attract a (higher) Fixed Fee. If the same counsel appears at the deferred sentence hearing as at the main hearing and the main hearing has been paid, PARITY will only accept the payment if it is paid as an additional payment fee (see Completion of a FIST document).

**NOTE:** 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 again at the hearing where the defendant was finally sentenced.

- (iii) A sentence hearing that takes place at the same time as a DTA or Proceeds of Crime hearing attracts both an 'ordinary' sentence fee and the half or full day confiscation fee. (see table at 32).
- (iv) A standard appearance fee is payable if either an Adjourned or Deferred Sentence hearing is non-effective.
- (v) A sentence fee can be paid when the advocate opens the facts of the case and sentence is adjourned to another day.

- (vi) A sentence hearing that lasts for longer than a day attracts a sentence fee for each day.
- (vii) No separate fee is payable if the sentence hearing is part of the main hearing.
- (viii) Where the defendant is sentenced on more than one indictment at the same time only one fee is payable.
- (ix) The making 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.
- (x) An uplift is payable for each additional defendant. See paragraph 40.

**Note:** This term relates to a sentence on indictment - see (34 (i))

*Fee payable for sentence hearings - see table below:*

<i>Hearing</i>	<i>Queen's Counsel</i>	<i>Other Leading Junior</i>	<i>Junior or Sole Advocate</i>	<i>CODE</i>
<i>Deferred Sentence</i>	<i>£300.00</i>	<i>£204.00</i>	<i>£120.00</i>	<i>DSE</i>
<i>'Ordinary' Sentence*</i>	<i>£150.00</i>	<i>£102.00</i>	<i>£60.00</i>	<i>SHR</i>
<i>Non-effective Deferred or 'Ordinary' Sentence</i>	<i>£116.00</i>	<i>£79.00</i>	<i>£46.50</i>	<i>OHA</i>

### **35. NEWTON HEARING**

Where, following a case on indictment, a Newton hearing takes place the following shall apply;

- (i) the case for these purposes shall be treated as having gone for trial;
- (ii) the length of trial for this purpose shall be taken to be the combined length of the main hearing (date the defendant entered a guilty plea) and of the Newton hearing;
- (iii) the provisions of the Sections relating to cracked trials and guilty pleas will not apply where the Newton Hearing is adjourned to another date; in which case the graduated fee will be based on the combined length of the two hearings;
- (iv) the graduated fee will be calculated using the appropriate rates for a jury trial based on the number of pages of evidence and the number of witnesses in the main hearing;
- (v) no additional fee for sentence will be paid if the hearing is completed on that day.

- (vi) where the Newton hearing is non-effective i.e. facts agreed by the prosecution without witnesses being called, the advocate receives the appropriate graduated fee for the original hearing and a Standard Appearance or a Sentence Fee, if the defendant was sentenced on that day, for the second hearing
- (vii) if a different advocate attends the Newton hearing, the original advocate would receive the appropriate graduated fee
- (viii) the fee for the main hearing is paid to the original advocate who shall reimburse the advocate who attended on subsequent days.
- (ix) The GFS does not allow for a Newton Hearing in a Committal for Sentence. In this scenario the fees should be agreed and paid on a NOFF.

**36. FULL/HALF DAYS**

- (i) A full day is a hearing that commences before the luncheon adjournment and finishes at a time after the luncheon adjournment.
- (ii) A half-day is a hearing that commences and finishes either before or starts after the luncheon adjournment.
- (iii) This section applies to the hearings set out in paragraphs 28 to 33.
- (iv) This section does not apply to the refresher fee or length of trial fee where the full fee is paid irrespective of the length of attendance for that particular day.

**37. RETRIALS**

A retrial attended by the same advocate who attended the first trial will be remunerated as follows:

- (i) Where the retrial starts within one calendar month of the end of the first trial, the advocate will receive a reduction of **40%** of the graduated fee that is calculated for the second trial, save for the refresher fee which will be paid in full;
- (ii) Where the retrial starts more than one calendar month after the end of the first trial, the advocate will receive a reduction of **25%** of the graduated fee that is calculated for the second trial, save for the refresher fee which will be paid in full;
- (iii) If a trial is aborted and another jury sworn either the same day or the following working day, then the case is considered to be one trial and the graduated fee for that length of trial will be payable. If there is a gap of more than one working day then it is considered to be a retrial.
- (iv) The trial is deemed to have finished on the day that the jury is discharged.
- (v) Where a different advocate attends the retrial the full graduated fee will be paid for that trial.

- (vi) The graduated fee for this purpose includes the appropriate base fee, length of trial uplift, evidence uplift and witness uplift together with a defendant uplift where applicable.
- (vii) The graduated fee for the retrial is calculated on the constituents of the second trial and then reduced by the relevant percentage. This may be different from the graduated fee paid for the first trial i.e. a different number of witnesses or pages of evidence.
- (viii) When the jury are 'hung' at the end of a trial and the case is adjourned for the Prosecution to make a decision whether to retry the case, if the case is then listed for the Prosecution to offer no evidence, a Standard Appearance Fee (OHA) should be paid, not a cracked trial fee. Alternatively, when a jury are hung and the case is adjourned for trial, if the case is then listed and the Prosecution offer no evidence, a cracked trial fee would be paid.

38. **APPEALS AGAINST CONVICTION/SENTENCE, BREACHES OF CROWN COURT ORDERS and COMMITTALS for SENTENCE**

- (i) (The GFS allows a Fixed Fee for appeals against conviction, appeals against sentence, breaches of crown court orders and committals for sentence.
- (ii) The advocate can claim the same amount again if the case is part heard overnight or can apply at the end of the case to have the fee assessed ex post facto
- (iii) An uplift is payable for each additional defendant. *See paragraph 40*
- (iv) A Standard Appearance Fee is payable for any non-effective hearing under this section.
- (v) In the vast majority of cases, the appropriate fee for an appeal, committal or breach of sentence hearing is deemed to be the fixed fee. In certain cases, however, the advocate may apply, in writing, for the case to be assessed ex post facto if he feels the fixed fee is inappropriate:
  - Where the case lasts for longer than one day,
  - In a plea before venue committal for sentence
  - In a committal for sentence where a Newton Hearing is heard in the Crown Court
- (vi) Where a case under this Section is heard on the same day as a **main hearing**, or where it is heard on the same day with another case(s) where a Fixed Fee would be paid, then a case uplift applies. *See paragraph 42.*
- (vii) Any case heard at the Court of Appeal falls outside of the Graduated Fee Scheme.

*Fee payable for appeals against conviction/sentence, breaches of crown court orders and committals for sentence*

<i>Type of Work</i>	<i>Fee for Queen's Counsel</i>	<i>Fee for Other Leading Advocate</i>	<i>Fee for Junior &amp; Sole Advocate</i>	<i>CODE</i>
<i>Appeal against Sentence &amp; Breach of Crown Court Order</i>	<i>£184.50</i>	<i>£125.00</i>	<i>£73.50</i>	<i>ASE</i>
<i>Appeal against Conviction</i>	<i>£292.25</i>	<i>£199.00</i>	<i>£117.00</i>	<i>ACV</i>
<i>Committal for Sentence</i>	<i>£184.50</i>	<i>£125.00</i>	<i>£85.00</i>	<i>CSE</i>

### **39. DISQUALIFIED DRIVER – SENTENCE**

When Counsel is instructed to attend to assist the Court in an application by the defendant to have a disqualification reduced an Appeal against Sentence fee is payable.  
*See table at paragraph 38.*

### **40. DEFENDANT UPLIFT**

- (i) An uplift of 10% *of the main hearing fee* is payable for the second defendant and for each subsequent defendant tried together on the same indictment and for certain fixed fees as follows: -
- the Base fee for any case heard upon indictment; *and*
  - the fixed fee for appeals against conviction / sentence, breaches of crown court orders and committals for sentence.
- (ii) In addition a 10% uplift of the hearing fee is allowed for each additional defendant in the following circumstances: -
- **BPD** - Plea and Case Management Hearings
  - **OHA** - Cases listed for Plea adjourned for trial
  - **FNR** - Trials stood out **not** on application
  - **PAW, PAH, DTW, DTH**, - Hearings where a daily or half daily rate is allowed (PII, DTA etc)
  - **SHR, DSE** - Sentences and Deferred Sentences
  - **OHA** - Any non-effective hearings that were not listed for trial (where a Standard Appearance Fee would be paid)
- (iii) An uplift under this section is not payable in the following circumstances:-
- **BWA** - Bench Warrant issued (not executed within 3 months)
  - **NEF** - Trial Stand Out (on application by defence or prosecution)
  - **BAP** - Bail Applications
- (iv) Where there is more than one defendant a 5% uplift for each additional defendant is payable of each length of trial uplift. (*See paragraph 12*).

#### **41. CASE UPLIFT**

- i) In the event of more than one case against the same defendant being listed and dealt with as main hearings at the same time, counsel shall elect the principal case upon which the full graduated fee will be paid.
- ii) An uplift of 20% of the base fee of the principal case will be allowed for each additional case 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.
- iii) Where the principal case is an effective trial, a cracked trial or a guilty plea the uplift is calculated as being 20% of the base fee of that case. The offence class and category of counsel only determines the appropriate fee.
- iv) Where 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 20% of the appropriate fixed fee.
- v) A case uplift only is payable, the number of defendants in the additional case(s) are not calculated
- vi) This section applies to all categories of counsel.

#### **42. 'PAPER' and 'ELECTRONIC' PLEA and DIRECTIONS HEARINGS**

- (i) Where a fee of £30 has been paid for completing a paper or an electronic Plea and Directions Form and the case is subsequently listed for a PCMH, only the balance of the fee for a PCMH is payable.
- (ii) Where a different advocate appears at an oral Hearing from the one who prepared the paper or electronic Form; the whole fee will be paid to the second advocate who attended the Hearing and who shall reimburse the first advocate.
- (iii) A maximum of £100 fee is payable for a paper or electronic form which is followed by an oral hearing regardless as to whether the same advocate does both. However in any subsequent oral hearing the full fee is payable to the advocate who attends.

#### **43. CONFERENCES**

- (i) The fee will be based on the amount of 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. (*See paragraph 48*)

- (ii) The conference should be held with the knowledge and agreement of the CPS.
- (iii) The payment will include reasonable travel time and expenses where incurred.

**44. FITNESS TO PLEAD HEARINGS**

- (i) Where in any case there is a hearing to determine the question of whether a defendant is fit to plead and to stand trial, the case will fall within the appropriate Class for the offence on indictment, or within Class D, whichever the advocate elects.
- (ii) Where a fitness to plead or to stand trial hearing takes place and:-
  - (a) the trial on indictment takes place at any time thereafter, the length of the fitness to plead or to stand trial hearing and the trial on indictment, are to be combined for the purposes of calculating the trial graduated fee;
  - (b) the trial on indictment does not take place thereafter, the advocate may elect between a trial graduated fee based on the offence on the indictment and the pages of prosecution evidence and prosecution witnesses and the length of the fitness to plead or to stand trial hearing, or a cracked trial fee;
  - (c) guilty plea is entered, the advocate may elect to claim a trial graduated fee as in (b) or a guilty plea graduated fee.

**45. RESTRICTION ORDER UNDER S41 MENTAL HEALTH ACT 1983**

- (i) Where in any case a restriction order is made under Section 41 of the Mental Health Act 1983, the case shall fall within offence category 'A'.
- (ii) 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.
- (iii) It is analogous to a sentence of life imprisonment and the weight of the case is reflected in such hearings being placed in offence category 'A'.

**46. VIEWS OF LOCUS**

- (i) In cases where it is reasonable for the advocate to visit the locus (scene of the offence) a separate payment will be made to the advocate.
- (ii) The fee will be based on the number of hours reasonably spent by the advocate undertaking the view and paid at the appropriate hourly rate for the category of that advocate.
- (iii) The payment will include reasonable travel time and expenses where occurred.

**47. AUDIO/VIDEO TAPES**

- (i) In any case on indictment advocates will be paid for their time in listening to tapes or viewing videos as part of the evidence in the case. Payment is made according to the running time of the tape or video and the number of 10-minute periods or part thereof spent listening or viewing.

*Fee payable for audio/video tapes - see table below:*

<i>Queen's Counsel</i>	<i>Other Leading Advocate</i>	<i>Junior or sole advocate</i>
<i>£27.15 per 10 minutes or part of</i>	<i>£18.50 per 10 minutes or part of</i>	<b><i>£10.90 per 10 minutes or part of</i></b>

- (ii) The time of each tape should be calculated separately. Record the time of each tape exactly on the FIST and PARITY will calculate the fee.

#### 48. HOURLY RATE

- (i) This fee is payable for work that falls outside the Graduated Fee and includes: -
- conferences
  - views of locus
  - special preparation
  - wasted preparation
  - travelling time (conferences, view of locus etc *See paragraph 51 (iv)*)
  - advice in Unduly Lenient Sentence referrals.
- (ii) The time should be rounded up to the next ¼ of an hour and each conference will be calculated separately. The GFC will show each ¼ of an hour (or part thereof) as 1 Unit, i.e. two conferences lasting 40 minute each = 2 x 45 minutes (1 ½ hours) or 6 Units

**Note:** There is **no** defendant uplift for this fee.

*Fee payable at an hourly rate- sees table below:*

<i>Length of Trial</i>	<i>Queen's Counsel</i>	<i>Other Leading Advocate</i>	<i>Junior or sole advocate</i>
<i>1 - 10 days</i>	<i>£62.50 per hour</i>	<i>£47.00 per hour</i>	<b><i>£33.50</i></b>
<i>11 - 40 days</i>	<i>£75.00</i>	<i>£56.40</i>	<b><i>£40.20</i></b>

#### 49. DAILY RATE

- (i) This fee is payable for any hearing where there is an application: -
- **PAW/PAH** - to determine the admissibility of evidence. (*See paragraph 28*)
  - **PAW/PAH** - to stay proceedings;
  - **PAW/PAH** - to determine whether any material should be disclosed. *See paragraph 30.*
  - **PAW/PAH** - for a witness summons for disclosure of third party material. *See paragraph 33*
  - **PAW/PAH** – and counsel is required to attend as an observer or to assist the Court. *See paragraph 33*
  - **PAW/PAH** - for the indictment to be severed or the indictments to be joined
  - **DTW/DTH** - for a confiscation order in accordance with Section 2 of the Drug Trafficking Act 1994 or Section 1 of the Criminal Justice Act 1988 or Part II of the Proceeds of Crime Act 2002 . *See paragraphs 31 and 32.*

- (ii) If the hearing is on the same day as the **main hearing** no separate fee is paid but the hearing is included in the calculation of the length of the main hearing.
- (iii) A hearing dealing with the non-compliance of a previous order does **not** attract a daily fee and a Standard Appearance Fee should be claimed.
- (iv) For a confiscation order to have proceeded, evidence must have been considered even if no order is subsequently made. In the event of no evidence being considered or the prosecution deciding not to apply for an order then either sentence fee (if applicable) or a Standard Appearance Fee is allowed.
- (v) In the event of an effective DTA hearing and other effective work carried out on the same day e.g. a sentence; then both fees would be payable. *See paragraph 32.*

*Fee payable for daily rate- see table below:*

<i>Hearing</i>	<i>Queen's Counsel</i>		<i>Other Leading Advocates</i>		<i>Junior or sole advocate</i>	
	<i>1-10 days</i>	<i>11-40 days</i>	<i>1-10 days</i>	<i>11-40 days</i>	<i>1-10 days</i>	<i>11-40 days</i>
<i>Full Day</i>	<i>£330.00</i>	<i>£495.00</i>	<i>£250.00</i>	<i>£375.00</i>	<i>£178.25</i>	<i>£267.45</i>
<i>Half Day</i>	<i>£185.00</i>	<i>£277.50</i>	<i>£140.00</i>	<i>£210.00</i>	<i>£99.50</i>	<i>£149.25</i>

**50. UNUSED MATERIAL**

There is no additional fee payable to the advocate for looking at unused material. Payment for this work is included in the graduated fee. In cases lasting beyond 10 days, the ‘gradient factor’ should compensate the advocate for examining unused material. The gradient is a sliding scale applied from day 11 and reaching a maximum at day 25. It does not continue to rise for days 26 to 40.

**51. TRAVELLING and HOTEL EXPENSES**

- (i) Travelling and hotel expenses will be paid where the advocate is instructed to appear in a court, which is further than 25 miles (40 kilometres) of his/her chambers.
- (ii) Where an advocate is instructed to appear in a court, which is not within 25 miles (40 kilometres) of his/her chambers, reasonable expenses actually incurred may be paid.
- (iii) Before any claim made by the prosecution advocate is agreed, confirmation should be obtained from the Court Service as to the arrangements made with the defence advocate.
- (iv) The hourly rate will apply to reasonable travel time for conferences and views of locus. *See paragraphs 43 and 46.*
- (v) The journey is deemed to have started from Chambers unless the actual starting point is nearer.

## 52. SPECIAL PREPARATION FEE

- (i) An additional payment is allowed in any case on indictment in the Crown Court in respect of which a graduated fee is payable in few exceptional cases that meet 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 because the case involves an unusual or novel point of law or factual issue;
  - account should be taken of the nature and seriousness of the case when assessing whether the issues raised by the case should be within the knowledge and experience of such an advocate
  - the amount of special preparation fee will be calculated from the number of hours of preparation in excess of the sum normally allowed for cases of the same type, using the rates set out for hourly fees as appropriate to the category of advocate *See paragraph 48.*

- (ii) An hourly rate fee may be paid for special preparation where the pages of evidence in an effective jury trial exceed 10 000. Any applications received from chambers for a special preparation fee in these circumstances should be referred to ERPB.

- (iii) The time taken to research the law in respect of the case is included in preparation time - the advocate is assumed to know the law, except in very unusual cases or where unexpected points of law or legal issues arise.

- (iv) A GFS Cost Judge ruling (*R v Cadby*) reinforced the point that work undertaken in reviewing substantial amounts of unused material does not in itself constitute special preparation. Counsel for the defence claimed 260 hours of special preparation because he did a substantially greater amount of work than would be normal for a similar case. The material included transcripts from the first trial, intelligence files and unused material. The work must relate to an unusual or novel point of law or factual issue.

The Cost Judge dismissed the appeal and said “time spend considering... a transcript of a previous trial cannot amount to a very unusual or novel factual issue”.

- (v) In the GFS Cost Judge ruling (*R v Walters*), Counsel specified several elements of the case, namely telephone evidence, facial mapping, covert surveillance and a virtual reality CD, were new and novel matter that had not previously come within he experience. The Cost Judge felt they were not so novel in the generality of Crown Court cases. The final element of the appeal was that the sheer volume of extra work caused by a combination of these elements entitled counsel to a special preparation fee.

The Cost Judge dismissed the appeal and ruled “mere volume of paper, necessitating additional preparation, cannot amount to justification for a special preparation fee”.

## 53. WASTED PREPARATION FEE

- (i) 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 case is completed.
- (ii) In the normal way the principle is applied that payment will not be made more than once for the same work save in very exceptional circumstances.
- (iii) A fee may be paid 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;
  - (b) written evidence may consist of a statement by the advocate setting out details of when instructions accepted, when the case was warned or fixed or what steps were taken to avoid a listing conflict.
  - (c) where the fixture is moved by the court in spite of the advocate's objections;
  - (d) where the advocate withdraws from the case with the leave of the court due to professional embarrassment;
- (iv) Where the advocate has a public duty eg sitting as a recorder.
- (v) 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 of 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 case (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 sufficient information to support the circumstance in which the brief was returned and the number of hours of work undertaken;
  - (g) this should include copies of relevant documents and details of the dates when the brief was received and returned, when the 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; *See paragraph 47.*
  - (i) the fee will be paid at the conclusion of the case.

## 54. COURT of CRIMINAL APPEAL HEARINGS

These cases do not fall within the provisions of GFS.

**55. QUEEN'S COUNSEL and LEADING COUNSEL**

- (i) The GFS provides for payments to Queen's Counsel and leading juniors. (*see the table in Annexes 2 to 7*).
- (ii) Where on a case on indictment two advocates are instructed to prosecute a case:
  - the leading advocate is a Queen's Counsel he/she will receive the graduated fee and the fee specified in the table of fees for ancillary hearings;
  - a junior advocate is leading another junior, the Leader is entitled to three quarters of the graduated fee payable to a Queen's Counsel and the fee specified in the table of ancillary hearings;
  - in either case, the junior advocate shall receive one-half of the graduated fees payable to a Queen's Counsel for the main hearing and the fee specified in the table of ancillary hearings.
  - where a junior advocate prosecutes a case and the defendant is represented by a Queen's Counsel and a junior, or a leading junior with a junior, there is no percentage uplift and he is paid as a junior advocate.
- (iii) The above applies only to graduated fee for the main hearing and not to any ancillary hearing.
- (iv) For the purposes of this Section Senior Treasury Counsel equate with Queen's Counsel and Junior Treasury Counsel equate with Junior Counsel.

**56. CASES THAT LAST LONGER THAN 40 DAYS**

- (i) Where a case is estimated at PCMH to last in excess of 40 days the provisions of the GFS will not apply and the fees should be managed in accordance with present guidelines on High Cost Cases and Very High Cost Cases.
- (ii) Where it was estimated at PCMH that the case would last longer than 40 days but went short for any reason, the case will remain a Very High Cost Case.
- (iii) Where a case was originally estimated to last for 40 days or less but in fact lasts for longer than 40 days the provisions of GFS will still apply.

**57. NOTING JUNIOR**

- (i) A daily fee of £100 is payable to an advocate, who is not briefed in the case, who takes a note of the proceedings where the case falls within the GFS.
- (ii) The fee is payable for all or part of a day.

*Fee payable for Noting Junior:*

<i>Hearing</i>	<i>Advocate</i>	<i>Fee</i>
<i>Full/Half day</i>	<i>Junior only</i>	<i>£100</i>

- (iii) 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.

**58. ADVANCED, STAGED and HARDSHIP PAYMENTS**

- (i) *Advanced* payments are payable in all cases where a PMCH has been held and the advocate has satisfied that - at least 5 days before the hearing - he/she has read the papers in the case and advised on plea(s)
- (ii) *Hardship* payments may be made on proof of likelihood of financial hardship.
- (iii) The sum cannot exceed the amount that is likely to be eventually paid, but payment will not be made for sums less than £5,000.00.

**59. CALCULATION of the GRADUATED FEE**

The calculation of a graduated fee is as follows;

**JURY TRIALS**

- The base fee is determined by the offence group to which at least one count in the indictment falls and the category of advocate (*see Table of Fees at Annexes 2 to 4*).
- The length of trial uplift is paid for each day or part day by which the trial exceeds one day. The length of trial uplift is increased by a gradient based on the number days the trial runs between 11 and 25. The gradient increase is paid on days 2 to 40. (*See paragraph 12 & Table of Fees at Annex 3 and 4*)
- The number of refresher fees is based on the number of days or part days that the advocate attends the court after the first day. If a different advocate attends in the absence of the trial advocate the 'stand in' receives the refresher fee for that day. (*See paragraph 11*)
- An evidence uplift fee for each page of prosecution evidence. (*See paragraph 13*).
- A witness uplift fee for each prosecution witness (*see paragraph 14*).

Thus the calculation is: -

Base Fee (*according to offence class and category of counsel*)  
+ Refreshers (*x number of days/parts of a day the advocate attended by which the trial exceeds one day*)  
+ Length of Trial Uplift (*x number of days/parts of days by which the trial exceeds one day (+ 11-25 day gradient where necessary)*)  
+ Evidence Uplift (*pages of prosecution evidence*)  
+ Witness Uplift (*number of witnesses*)  
= Graduated Fee

## **GUILTY PLEAS**

- The offence group, into which at least one count in the indictment falls, and the category of the advocate determine the base fee.
- An evidence uplift fee for each additional prosecution witness in accordance with the three thresholds.

Thus the calculation is: -

$$\begin{array}{r} \text{Base Fee (according to offence class and the category of counsel)} \\ + \text{ Evidence Uplift (pages of prosecution evidence excluding the first 10 and} \\ \text{with thresholds at 51 and 101 see paragraph 13)} \\ = \text{ Graduated Fee} \end{array}$$

## **CRACKED TRIALS**

- The offence group into which at least one count in the indictment falls and the category of the advocate determine the Base fee.
- Evidence uplift fee for each additional prosecution witness in accordance with the three thresholds (*see the Table of Fees at Annexes 5 and 6*).
- Witness uplift (*see paragraph 14*).

Thus the calculation is: -

$$\begin{array}{r} \text{Base Fee (according to offence class and category of counsel)} \\ + \text{ Evidence Uplift (pages of prosecution evidence excluding the first 10)} \\ + \text{ Witness Uplift} \\ = \text{ Graduated Fee} \end{array}$$

## **60. CLAIM AND APPEAL PROCEDURE**

It is of vital importance that file endorsements are made accurately and contemporaneously. When the case is concluded you should agree the information on the Fees Information Sheet (FIST) with the advocate to ensure the Graduated Fee Claim (GFC) will match exactly.

The case file and FIST should be passed to the Fees Clerk quickly.

You are provided with step-by-step guide to process claims and the appeal procedure. *See Annex 8.*