

Graduated Fee Scheme D

Guidance on the application of split fees in cases prosecuted by internal and external advocates

1. This document sets out the approach taken by the Crown Prosecution Service to paying Graduated Fee Scheme (GFS) D cases where a Crown Advocate (CA) returns a brief to an external advocate at the Bar or an external advocate at the Bar returns a brief to a CA.
2. The principle behind 'splitting' the fee is to ensure that an external advocate who appears at a sentence hearing, and who would normally only be entitled to an SHR fee, is properly remunerated for reading and preparing the case.
3. When splitting fees, the value of the fees due for the case or linked cases should firstly be calculated. The value of the case is the amount which would have been paid solely to an external advocate under the GFS. The total value of the fees recorded by the CA (before the 10% reduction) plus the amount paid to the external advocate must not exceed the value of the fees due for the case or cases as a whole. There is one exception to this principle which is set out at paragraph 17 of this guidance.
4. **Areas must be diligent in adjusting the CAs daily records to reflect any alteration to an original claim.**

Guilty plea and sentence (one main hearing only)

5. Where a CA prosecutes a hearing where a guilty plea (5) is entered and an external advocate prosecutes the sentence hearing and opens the facts, the fee for the guilty plea (standard or enhanced base fee plus any defendant uplifts) and the sentence fee should be combined and the fee split with the external advocate being paid half on a NoFF and the CA recording the other half as part of his/her record.
6. However, where an external advocate prosecutes a hearing where a guilty plea (5) is entered and a CA prosecutes the sentence hearing, the fee for the guilty plea (5) is paid to the external advocate on a FIST and only the sentence fee should be recorded by the CA.

Newton Hearings

7. Under the GFS where there is a guilty plea followed by an effective Newton Hearing this is paid as an effective trial with the date the guilty plea was entered being classed as the first day of trial (and the main hearing date) and the day(s) of the Newton Hearing being the second (and subsequent) day(s) of the trial.
8. The GFS C effective trial main hearing fee is a fee which covers the first two days of an effective trial. Any subsequent days of trial are remunerated by way of a single unified daily advocacy fee (paid from day three onwards). It is not therefore possible to split the fees in a Newton Hearing in the same way as they were split under GFS B.
9. Where a CA prosecutes the guilty plea and an external advocate prosecutes an effective Newton Hearing, as the external advocate has prepared for the Newton Hearing and has attended to prosecute the 'trial', the entirety of the main hearing fee should be paid to the external advocate. Any subsequent sentence fee should also be paid to the external advocate in its entirety. These fees can be paid on a **FIST**. This will apply irrespective of the number of days the Newton Hearing lasts.
10. **In this scenario, any fees/savings previously recorded by a CA must be adjusted to £0.00.**

Newton Hearing - ineffective

11. Where the CA prosecutes the guilty plea, an external advocate appears to prosecute the Newton Hearing and the Newton Hearing is **ineffective**, the case reverts to a guilty plea and a sentence and the fee should be split between the external advocate and the CA (as at 5. above).

Cracked trials

12. Where an external advocate prosecutes a hearing which results in a cracked trial main hearing and the CA prosecutes the sentence hearing, the external advocate is entitled to the full cracked trial fee (subject to the multiple cracked trial provisions) and the CA can record a sentence fee.
13. Where a CA prosecutes a hearing which results in a cracked trial main hearing and an external advocate prosecutes the sentence hearing (and opens the facts of the case), the fees should be divided as follows:

- The external advocate is entitled to half the notional guilty plea fee plus half a sentence fee.
- The CA is entitled to record the full cracked trial main hearing fee minus half the notional guilty plea fee plus half a sentence fee.

14. For example, a one indictment, one defendant burglary case with 40 pages of evidence and 11 witnesses results in a cracked trial main hearing. The cracked trial fee for that case would be £480 plus one payable witness at £3.33, total £483.33. The notional guilty plea for that case would be £220 and the sentence fee is £60.

- The external advocate would be paid: $£110 (220 \div 2) + £30 = £140$
- CA would record: $£482.33 - £110 (220 \div 2) + £30 = £403.33$

15. One word of caution however, if the CA prosecutes a hearing where the case cracks whilst the external advocate is still technically in possession of the brief, you should proceed as set out at paragraph 17 below.

16. In these circumstances, it is likely that the CA will have already recorded a full cracked trial fee. Areas should be diligent in adjusting the CA's daily log form to reflect the alteration to the original record.

Main Hearings resulting from cases listed at short notice

17. 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. In these circumstances exceptionally, the Crown Advocate will also be entitled to record an OHA as a counsel fee saving.

More than one case and/or more than one defendant

18. The principle of splitting fees in cases which result in a single main hearing is quite straightforward. Where there is more than one defendant and/or more than one indictment, the following guidance should be applied:

19. Where an external advocate is to receive a full main hearing fee in a case, other main hearing fees in the same case will not be split.

Example 1

Single indictment case with two defendants.

1.6.12	Defendant 1 pleads guilty and is adjourned for sentence (defendant 2 does not attend)	CA appears
1.7.12	Defendant 2 pleads guilty and is adjourned for sentence	External advocate appears
15.8.12	Both defendants listed for sentence	External advocate appears

In this case, the external advocate will receive a guilty plea main hearing fee (5) for the defendant who pleaded guilty on 1.7.12 and will therefore be remunerated for reading and preparing the case. On that basis, the guilty plea main hearing fee for 1.6.12 should not be split. The external advocate should be paid a full SHR fee for 15.8.12 (and half the sentence fee should not be credited to the CA saving).

20. Where the external advocate does not receive a full main hearing fee in a case, the fee should be split.

Example 2

One defendant and two cases.

6.7.12	Defendant pleads guilty to indictment A and case is adjourned for sentence	CA appears
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The defendant is committed on indictment B and the external advocate is instructed.

1.9.12	Defendant pleads guilty to indictment B and case is adjourned for sentence	External advocate appears
29.11.12	Both cases (indictments A and B) are listed for sentence	External advocate appears

In this scenario, the external advocate will receive a guilty plea main hearing fee for 1.9.12 for indictment B. It will also be necessary for the external advocate to read and prepare indictment A for sentence and therefore the guilty plea for the main hearing on 6.7.12 should be split (and the CA counsel fee saving should be adjusted accordingly). The external advocate should be paid a full SHR fee for 29.11.12 (and half the sentence fee should not be credited to the CA saving).

Example 3

One defendant and two cases.

1.7.12	Defendant pleads guilty to indictment A on the day of trial (cracked trial) and case is adjourned for sentence	CA appears
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The defendant is sent on indictment B and an external advocate is instructed.

1.8.12	Defendant pleads guilty to indictment B and case is adjourned for sentence	External advocate appears
22.8.12	Both cases (indictments A and B) are listed for sentence	External advocate appears

In this scenario, the external advocate will receive a guilty plea main hearing fee for 1.8.12 for indictment B. It will also be necessary for the external advocate to read and prepare indictment A for sentence and therefore the cracked trial fee for the main hearing on 1.7.12 should be split in accordance with the guidance above (and the CA counsel fee saving should be adjusted accordingly). The external advocate should be paid a full SHR fee for 22.8.12 (and half the sentence fee should not be credited to the CA saving)

Example 4

One defendant and two cases.

An external advocate is briefed in a case and the defendant enters a guilty plea at PCMH on 27.9.12. The defendant indicates that he wishes to be sentenced on the same day.

The defendant has previously entered a guilty plea to another indictment. A CA took that guilty plea at a PCMH on 6.9.12.

The defendant is sentenced on both indictments on 27.9.12.

Overall, the fees due on the case under GFS are: a guilty plea main hearing fee for 6.9.12 and another guilty plea main hearing fee for 27.9.12. There is no sentence fee payable as a main hearing fee is being paid for 27.9.12 when the defendant was sentenced.

In this example, the external advocate is entitled to a full guilty plea main hearing fee for 27.9.12. The external advocate should also be paid half a guilty plea main hearing fee for 6.9.12 and the CA saving for that day should be adjusted accordingly.