



1. This fees bulletin outlines further interim changes to the CPS Graduated Fee Scheme (GFS), in response to the impact of Covid-19 on crown court proceedings, relating to:
  - Case resolved after the Plea and Trial Preparation Hearing (PTPH)
  - Section 28 hearings

These changes will apply with immediate effect to all ongoing cases until further notice.

**Cases resolved after the PTPH**

2. The purpose of the Cracked Trial main hearing fee is to remunerate the advocate for preparing the case for trial in circumstances where the case is resolved prior to an effective trial taking place.
3. Under the existing GFS rules, it is payable if any of the following take place at any hearing where the case has previously been adjourned for trial:
  - acceptable guilty pleas are entered by a defendant.
  - the prosecution offers no evidence
  - the indictment is quashed or stayed
4. The definition of whether a case is ‘adjourned for trial’ is set out at paragraph 112 of the [Manual of Guidance](#) as follows:
  - a) 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 stayed
  - c) The case has been formally adjourned for the issue of Fitness to Plead to be resolved
5. The COVID-19 restrictions have resulted in many cases either being adjourned for trial without arraignment taking place, or not guilty pleas being entered but no trial date confirmed. In other words, one or other of the key elements which determine payment of a cracked trial fee, as set out at 4a above, has been absent.
6. In light of this the CPS has been considering cases resolved post-PTPH on an individual basis in order to determine the appropriate fee payable and will continue to do so. Advocates will be required to include all information they think relevant to making a determination as to the fee payable on the Crown Court Hearing Record Sheet (CCHRS).
7. Although not an exhaustive list, the factors listed below are those routinely taken into account when making such determinations.
  - **Arraignment** –
    - i. Where formal arraignment takes place at PTPH – either in person or remotely – this will continue to be the trigger for determining whether a case has been ‘adjourned for trial’.
    - ii. Where formal arraignment does not take place at PTPH the reason(s) should be clearly recorded by the advocate on the CCHRS – e.g. the defendant was not produced, the video link was faulty, fitness to plead was raised, COVID-19 restrictions.

If formal arraignment was unable to take place due to the COVID-19 restrictions, it will cease to be a relevant factor in determining whether a cracked trial is payable and the decision should be based on the other factors listed.

- **Indication of plea** – If there is any indication of a Not Guilty plea and confirmation that the judge has recorded the indication on the court record.

In Either Way cases a Not Guilty indication provided at NGAP may be a relevant consideration as would information regarding plea and issues contained on the BCM questionnaire. Preservation of credit for an early plea might suggest that the Judge has allowed the defence further time to take instructions as to plea. It should be noted, however, that the credit provisions allow a measure of discretion, subject to the circumstances and nature of the offence.

- **PTPH outcome** – the outcome of the PTPH and timetable for future progression of the case, including confirmation that all stage 1 to 4 orders have been made and the contested issues have been identified.
- **Trial date** – confirmation of the proposed trial date or other court pronouncement that it is unable to formally identify a trial date and the reasons for this. If the court have not set a date but indicate that one will be set at a point in the future, this shows that the case has been adjourned for trial, albeit sine die at the time of the PTPH.
- **Case resolution** – the timing of any subsequent guilty plea/resolution and the stage reached in proceedings and its proximity to the trial date.
- **Local protocols and arrangements** – reference to any interim protocol listing / case progression introduced locally to address the Covid-19 situation
- **Any other relevant information** – available to the CPS or submitted by the advocate/chambers. This may include details of engagement between the parties regarding case progression and timely resolution.

8. All decisions regarding the payment of cracked trial fees in cases impacted by the Covid-19 restrictions will be made by the Area Fees Manager, who will liaise closely with their Case Auditor or Head of Fees for guidance, where necessary.

### **Section 28 hearings**

9. Until further notice, all section 28 hearings will attract a Trial Daily Fee (TDF), payable immediately following the s.28 hearing. This includes s.28 hearings that have already taken place in ongoing cases.
10. [Fees Bulletin 4 of 2020](#) (para 12) explained that, because s.28 hearings are part of an ongoing trial under GFS, it would not be possible to make payment until the whole trial had concluded. Given delays to trial listings caused by Covid-19 and the further rollout of the section 28 provisions, however, the CPS now considers it appropriate to allow the immediate payment of a trial daily fee (TDF) for the s.28 hearing.
11. In addition, the instructed advocate will have the option of claiming the Upfront Covid-19 Fee (UCF) of £500.
12. Given that the TDF (and UCF) represents an advance payment, it will be imperative that advocate(s) maintains a detailed record of proceedings to allow for subsequent reconciliation and ensure that the fees for the whole proceedings are accurate.
13. Example 1 in the table below sets out the fees claimable and timing of those payments under these interim arrangements.

<b>Example 1</b>				
Counsel instructed (junior alone) – Sexual assault / 1 defendant (Scheme E – Standard Fee)				
Date	Hearing	Fees payable	Total payable	Date payable
20 June	s.28 Hearing – day 1	<ul style="list-style-type: none"> <li>▪ £480 – TDF</li> <li>▪ £500 – UCF (<i>Optional</i>)</li> </ul>	£980	Conclusion of s.28 hearing
9 Sept	Trial – Jury sworn, evidence called – day 2	<ul style="list-style-type: none"> <li>▪ Base Fee = £2,210</li> <li>▪ Daily Fee x 2 = £480</li> <li>▪ <i>£500 deduction re UCF</i></li> </ul>	£2,670	Conclusion of the trial
10 Sept	Trial – part-heard – day 3			
11 Sept	Trial concludes – day 4			

14. If the same advocate conducts both the s.28 hearing and subsequent trial, the advocate will be paid a TDF following the s.28 hearing. They will then receive a 4-day effective trial fee at the conclusion of the trial, minus one Trial Daily Fee (and UCF, where claimed) to take account of the TDF already paid for the s.28 hearing.
15. Returned Briefs – should a case be returned to another advocate following the s.28 hearing, the new advocate will constitute a stand-in for remuneration purposes. This is because the s.28 hearing is the start of the trial.
16. In such circumstances and where upfront TDF has been paid for the s.28 hearing, the effective trial fee, minus a TDF, will be paid to the advocate who conducted the s.28 hearing. The advocate who conducted the s.28 will then be responsible to remunerating the ‘stand-in’ advocate, as per example 2.

<b>Example 2</b>				
Counsel instructed (junior alone) – Abuse of position of trust / 1 defendant (Scheme E – Standard Fee)				
Date	Hearing	Advocate Attending	Usual Fee payable	Fee payable under interim arrangements
1 July	s.28 Hearing – day 1	Miss Shah	5-day Effective Trial payable to Miss. Shah  Mr. Roberts remunerated on a counsel-to-counsel basis	Upfront TDF paid to Miss Shah following the s.28 hearing.
9 Oct	Trial – Jury sworn, evidence called – day 2	Mr. Roberts		5-day Effective Trial paid to Miss. Shah at the conclusion of the trial.
10 Oct	Trial – part-heard – day 3			<b>Number of days attended recorded as 4 to reflect the upfront TDF already paid.</b>
11 Oct	Trial part-heard – day 4			
12 Oct	Trial concludes – day 4			Mr. Roberts paid by Miss Shah on a counsel-to-counsel basis

17. In circumstances where the advocate covering the s.28 claimed the UCF this will also need to be deducted from the trial fee ultimately paid.
18. Where a case that has had an effective s28 hearing but cracks, either before or on the date of the substantive trial hearing, the Effective Trial fee will be payable because the s.28 hearing starts the trial

process. In these circumstances, the trial fee payable will be for the combined length of the s.28 hearing and the hearing where the case cracks. Once again, the whole fee will be paid to the advocate who undertook the s.28 hearing, with an adjustment made to reflect the upfront TDF paid for the s28 hearing. The advocate who conducted the s.28 hearing will then be required to remunerate the advocate covering the hearing at which the case cracked on a counsel-to-counsel basis, as per example 3.

<i>Example 3</i>				
Counsel instructed (junior alone) – Exposure / 1 defendant (Scheme E – Standard Fee)				
Date	Hearing	Advocate Attending	Usual Fee payable	Fee payable under interim arrangements
2 Aug	s.28 Hearing – day 1	Mr. Singh	2-day Effective Trial payable to Mr. Singh  Miss Smith remunerated on a counsel-to-counsel basis	Upfront TDF paid to Mr. Singh following the s.28 hearing.
26 Sept	Listed for Trial – defendant pleads guilty	Miss Jones		2-day Effective Trial paid to Mr. Singh at the conclusion of the trial.  <b>Number of days attended recorded as 1 to reflect the upfront TDF already paid.</b>  Miss Jones paid by Mr. Singh on a counsel-to-counsel basis

19. Any queries in relation to this Fees Bulletin should be referred to your Case Auditor or the CBU mailbox ([CBU@cps.gov.uk](mailto:CBU@cps.gov.uk)).

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