

Fees Bulletin No.1 of 2014

Graduated Fee Scheme C



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Section 28 Youth and Criminal Evidence Act – Pre-recording of Cross Examination hearings

Section 28 of the Youth Justice and Criminal Evidence Act 1999 (YJCEA) allows a vulnerable or intimidated witness (as defined by the legislation) to pre-record their cross-examination before the trial.

This guidance sets out the approach to be taken in respect of remuneration of prosecuting advocates in accordance with the CPS Graduated Fee Scheme (scheme).

In cases where there is a hearing(s) at which a witness pre-records their cross examination, counsel will be remunerated for these hearings by way of a trial daily fee, as set out in Annex 3 of the GFS Manual of Guidance.

However, the s28 hearing does not affect the definition of the start of a trial in accordance with the rules as set out in paragraphs 122 to 133 of the Manual of Guidance. The s28 hearing fee will be paid as 'one off' daily fees for each day of the hearing, in advance of the trial proper commencing.

The subsequent main hearing fee in the case will be paid according to the

provisions as set out in the GFS Manual of Guidance. If the defendant subsequently pleads guilty, the Crown offer no evidence or the indictment is stayed, a guilty plea or a cracked trial fee would be paid, whichever is appropriate.

If the defendant goes to trial, the trial graduated fee will be paid in the usual way, with any effective trial commencing on the day the jury is sworn, notwithstanding that a daily fee(s) will have been payable for day(s) in advance of the trial.

The preliminary hearing in these cases will be remunerated in the usual way, namely a £46.50 mention fee (OHA). If the defendant pleads guilty at the preliminary hearing a guilty plea fee would be payable.

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 take place separately to the s28 hearing or any other directions hearing, the appropriate fixed fee should be paid. This will be either a mention hearing (OHA) or a legal argument fixed fee hearing (PAH/PAW) in accordance with paragraphs 211 to 218 of the Manual of Guidance.

In cases where there is a successful application to dismiss the charges before an indictment has been served on the court only the appropriate fixed fee for that hearing will be payable and not a main hearing fee.

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Witness count

One of the aims of Scheme C was to simplify the GFS system. This has been largely achieved. However, the application of the witness uplift can still prove administratively burdensome, particularly in larger and more complex cases.

In view of this it has been decided to allow fees clerks a 10% discretion in relation to the witness count when making payments for trial and cracked trial main hearings.

The effect of this is that if counsel indicates that the witness count is within 10% of the information available to the fees clerk the payment can be made with no further checking. It is axiomatic that all reasonable methods of checking should be undertaken before the 10% discretion is applied.

Preliminary Hearings, PCMH's and cases adjourned for trial

Some court centres are increasingly using preliminary hearings for purposes that go over and above the traditional purpose of these hearings. For example, trial dates may be fixed, defendants may be arraigned or directions other than the service of the case given.

The graduated fee scheme currently remunerates counsel for preliminary hearings by way of a standard

appearance fee (OHA), or a guilty plea fee (5) if the defendant enters a guilty plea. However, the guidance does not cover scenarios where the preliminary hearing becomes the PCMH in the case.

The Graduated Fee Scheme is outcome led, and the appropriate fee is usually what actually happens at the hearing. Therefore, preliminary hearings should be paid according to what actually happens at each hearing.

If there is a preliminary hearing, where some directions are given and a trial date is identified, but the defendant is not arraigned and the case is adjourned for a PCMH, this would be treated as a normal preliminary hearing and the hearing should be paid as a standard appearance fee (OHA), as the effective PCMH has not yet happened. If the defendant in this scenario pleaded guilty at the subsequent PCMH, the main hearing at that PCMH would be a guilty plea fee (5) as the case had not previously been formally adjourned for trial. Please refer to the definition of cases adjourned for trial at the end of this bulletin. In this case the defendant has not been formally arraigned at the preliminary hearing, so the case cannot be said to have been adjourned for trial.

If a preliminary hearing becomes the PCMH, i.e. the defendant is arraigned, enters a not guilty plea, the court has given directions in relation to trial readiness, witness requirements, interview edits etc, and the case is adjourned for trial - the preliminary

hearing can be paid as an effective PCMH (BPD). This is because, although listed as a preliminary hearing, the outcome of that hearing was that a PCMH had taken place and the case was formally adjourned for trial by the Court. If this is the case, then any future main hearing where the defendant changed his/her plea or no evidence was offered would be a cracked trial as the case had been formally adjourned for trial.

Paralegal officers and fees clerks will need to consider each hearing on its merits and consider what actually happened at the hearing when determining if a preliminary hearing should be remunerated as a standard appearance fee (OHA), or a PCMH fee (BPD).

In most cases, a preliminary hearing will be paid as a standard appearance fee (OHA). This will apply even if the court gives directions and identifies a provisional trial date. The identifying of a provisional trial date does not in itself mean that the case has been adjourned for trial. The giving of directions will not make the hearing a PCMH, unless at the end of the preliminary hearing the case is formally adjourned for trial, rather than the PCMH.

Definition of Cases adjourned for trial

The GFS manual at paragraphs 109 to 121 details the definition of when it is appropriate to pay cracked trial fees. The definition is that to pay a cracked trial fee the case must have previously been adjourned for trial.

For clarification, for a case to be formally adjourned for trial we would normally expect the following five things to have occurred –

- i) The defendant has been formally arraigned and entered not guilty pleas
- ii) The trial date has been formally declared by the court.
- iii) The court has made orders in respect of trial readiness, such as witness requirements, jury bundles, interview edits, case opening etc.
- iv) The listing of trial readiness hearings, such as pre-trial reviews or legal argument
- v) All parties leave court believing that the trial is the next significant milestone in the case.

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