



## IMPLEMENTATION OF SCHEME D

1. The CPS Graduated Fee Scheme (GFS) is changing from September 1 2019 when Scheme D is introduced.
2. This fees bulletin details the implementation arrangements and the changes that will apply from this date and should be read in conjunction with the CPS Graduated Fee Scheme – Scheme D Manual of Guidance (MoG).

### Scheme D – Outline of the Changes

3. The key changes to GFS are summarised as follows:
  - Increases to fixed fees to the level of the AGFS – the defence fee scheme
  - Payment of daily fees from the second day of trial
  - Removal of the reduction in daily fees in long running trials beyond 40 days
  - An updated definition of an Effective Trial to reflect the trial process
  - Expedited payment after a trial, when sentence is adjourned

The Manual of Guidance has been updated to reflect the changes to the scheme and is available on the CPS website and on the CPS Intranet.

### Implementation – 1 September 2019

4. Scheme D will apply to all main hearings and fixed fee hearings in existing and new cases that take place on or after 1 September 2019.
5. As is currently the case, all fees will be paid at the end of the case but the following shall apply:
  - All hearings up to and including 31 August will be remunerated under scheme C
  - All hearings taking place on or after 1 September will be remunerated under scheme D
  - Trials which are part-heard on 1 September will be paid under scheme D
6. It follows that it may be necessary in some cases to make two payments to counsel where a case has some hearings before 1 September but other hearings after that date, resulting in cases with hearings that fall to be remunerated under schemes C and D.
7. In example 1 below, the first two hearings will be paid under scheme C and the sentence hearing will fall under scheme D.

Example 1		
Date of hearing	Hearing type	Fee scheme applicable
5 July 2019	PTPH – Not guilty plea entered	Scheme C
29 August 2019	Listed for trial – Guilty plea	Scheme C
10 September 2019	Sentence – defendant sentenced and case concluded	Scheme D



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- 8. In relation to effective trials, the situation is slightly different. Any trial part heard on 1 September 2019 will be remunerated at scheme D rates, even if it started before that date.
- 9. In example 2 below, a trial starting on 29 August and concluding on 3 September would be paid under scheme D. Trials which commence and conclude prior to 1 September will be paid under scheme C.

Example 2		
Date of hearing	Hearing type	Fee scheme applicable
5 August 2019	PTPH – Not guilty plea entered	Scheme C
29 August 2019	Listed for trial – jury sworn and evidence called	Scheme D
30 August 2019	Day 2 – part-heard	
2 September 2019	Day 3 – part-heard	
3 September 2019	Day 4 – guilty verdict and adj. for sentence	
10 September 2019	Sentence – defendant sentenced and case concluded	Scheme D

**Definition of Start of trial**

- 10. The definition of an Effective Trial of trial has changed. It is still a requirement that a jury must be sworn and evidence called or read. However, the day a jury sworn is not necessarily the first day of a trial under scheme D. The full definition can be found at paragraphs 118-127 of the scheme D MoG.

Meaningful progress

- 11. The principle change will see days prior to the swearing of a jury being included in the trial fee provided:
  - a) the case was listed 'for trial'
  - b) the days resulted in meaningful progress, either in court or where the parties have been given time, or taken time, to undertake work out of court,
  - c) it led to a jury being sworn and evidence called, with the same advocate, within 7 calendar days, and
  - d) details of the meaningful progress are recorded on the Hearing Record Sheet.
- 12. The most common example would be in a case listed for trial where there are days of legal argument in advance of the jury being sworn and evidence called. Under the Scheme C, we would pay the days of legal argument as fixed fees and the first day of trial would not occur until the jury is sworn. However, under scheme D the first day trial is the date of the first day of the legal argument.
- 13. In example 3 below, the first day of the trial listing is taken with legal argument relating to admissibility of evidence. Following the court’s ruling on admissibility, the parties are given time on the second day of the trial listing to undertake out of court work in readiness for the trial. The jury is sworn and evidence is called on the third day of the trial listing. Further evidence is called on the fourth day before the jury’s verdict is returned on fifth day. Under scheme D, the first and second days of the trial listing



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are included within the trial fee on the basis that they constitute “meaningful progress”, as defined at paragraph 121b of the scheme D MoG.

Example 3			
Day	Listing and outcome	Fee payable under Scheme C	Fee payable under Scheme D
1	Monday 1 <sup>st</sup> , listed for trial; no jury sworn, legal argument and ruling re admissibility of evidence	Legal argument (fixed fee – PAW)	Trial – day 1 (main hearing fee)
2	Tuesday 2 <sup>nd</sup> , listed for trial; no jury sworn and case not called into court. Parties given time to revise jury bundles, consult with the victims and defendant, agree admissions and edit interviews in light of the ruling re admissibility of evidence	No fee payable	Trial – day 2 (daily fee)
3	Wednesday 3 <sup>rd</sup> , listed for trial; jury sworn, evidence called	Trial – days 1 & 2 (main hearing fee)	Trial – day 3 (daily fee)
4	Thursday 4 <sup>th</sup> , listed for trial, case continues		Trial – day 4 (daily fee)
5	Friday 4 <sup>th</sup> , listed for trial, verdict	Trial – day 3 (daily fee)	Trial – day 5 (daily fee)

14. As under scheme C, if a case is listed for trial and there is legal argument leading to the case being adjourned without evidence called, a trial will not have occurred and these days will be paid as fixed fees.
15. In example 4 below, the first two days are adjourned for administrative reasons with no meaningful progress leading to the trial taking place either in court or out of court. Consequently, the first two days would be paid as a stood out trial and the trial would start on the third day the case was listed trial when the jury was sworn.

Example 4			
Day	Listing and outcome	Fee payable under Scheme C	Fee payable under Scheme D
1	Listed for trial; witness does not attend, case adjourned	Trial stood out (fixed fee – NEF)	Trial stood out (fixed fee - NEF)
2	Listed for trial; no jury available, case adjourned	Trial stood out (fixed fee – FNR)	Trial stood out (fixed fee - NEF)
3	Listed for trial; jury sworn, evidence called	Trial – days 1 & 2 (main hearing fee)	Trial – day 1 (main hearing fee)
4	Listed for trial, verdict		Trial – day 2 (daily fee)

16. Where a case is listed for trial and hearings take place but the trial is ineffective, those hearings will be remunerated as fixed fees. This is because the criteria for an effective trial of a jury being sworn and evidence being called have not both been met.



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Example 5			
Day	Listing and outcome	Fee payable under Scheme C	Fee payable under Scheme D
1	Listed for trial; legal argument	Legal argument (fixed fee – PAW)	Legal argument (fixed fee – PAW)
2	Listed for trial; legal argument	Legal argument (fixed fee – PAW)	Legal argument (fixed fee – PAW)
3	Listed for trial; legal argument	Legal argument (fixed fee – PAW)	Legal argument (fixed fee – PAW)
4	Listed for trial, legal argument	Legal argument (fixed fee – PAW)	Legal argument (fixed fee – PAW)
5	Listed for trial, Judge rules in favour of the defence – prosecution offer no evidence	Cracked trial main hearing fee	Cracked trial main hearing fee

17. In example 5, although there is a continuous process where the case has been listed for trial, there has been no effective trial. Days 1 to 4 would attract whole day legal argument fees (PAW) and day 5 would be a cracked trial fee as it is the resolution of the indictment.

Continuous Trial Process

18. In trial cases, for days of meaningful progress to be included, they must be part of a continuous trial process. For the trial process to be deemed continuous, any adjournment between hearings must be no longer than 7 calendar days.

Example 6			
Date	Listing and outcome	Fee payable under Scheme C	Fee payable under Scheme D
Monday 2 September	Listed for trial; legal argument	Legal argument (fixed fee – PAW)	Effective trial – day 1
Tuesday 3 September	Listed for trial; legal argument	Legal argument (fixed fee – PAW)	Effective trial – day 2
Wednesday 4 September	Listed for trial; legal argument	Legal argument (fixed fee – PAW)	Effective trial – day 3
Thursday 5 September	Listed for trial, legal argument	Legal argument (fixed fee – PAW)	Effective trial – day 4
Friday 6 September	Listed for trial; legal argument	Legal argument (fixed fee – PAW)	Effective trial – day 5
Monday 9 September	Not listed	No fee payable	No fee payable
Tuesday 10 September	Not listed	No fee payable	No fee payable
Wednesday 11 September	Not listed	No fee payable	No fee payable
Thursday 12 September	Listed for trial; jury sworn and evidence called	Effective trial – day 1	Effective trial – day 6
Friday 13 September	Listed for trial; trial continues	Effective trial – day 2	Effective trial – day 7
Monday 16 September	Listed for trial; verdict and sentence	Effective trial – day 3	Effective trial – day 8



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19. In example 6, there is a continuous series of hearings, which constitute meaningful progress, starting on 2 September leading to the trial starting on the 12 September. Although the case isn't listed for 5 calendar days (Sunday to Wednesday) between the conclusion of the legal argument and swearing of the jury, the adjournment is no more than 7 calendar days so the proceedings are deemed to be continuous.
20. Had the case shown in example 6 been adjourned on Friday 6 September until Monday 16 September, the adjournment would have exceeded 7 calendar days (Saturday 7 September to Sunday 15 September – 9 days). Accordingly, as outlined in example 7 below, it would not be deemed a continuous trial process and the fees payable would be as follows:

Example 7			
Date	Listing and outcome	Fee payable under Scheme C	Fee payable under Scheme D
Monday 2 September	Listed for trial; legal argument	Legal argument (fixed fee – PAW)	Legal argument (fixed fee – PAW)
Tuesday 3 September	Listed for trial; legal argument	Legal argument (fixed fee – PAW)	Legal argument (fixed fee – PAW)
Wednesday 4 September	Listed for trial; legal argument	Legal argument (fixed fee – PAW)	Legal argument (fixed fee – PAW)
Thursday 5 September	Listed for trial, legal argument	Legal argument (fixed fee – PAW)	Legal argument (fixed fee – PAW)
Friday 6 September	Listed for trial; legal argument	Legal argument (fixed fee – PAW)	Legal argument (fixed fee – PAW)
Monday 9 September	Not listed	No fee payable	No fee payable
Tuesday 10 September	Not listed	No fee payable	No fee payable
Wednesday 11 September	Not listed	No fee payable	No fee payable
Thursday 12 September	Not listed	No fee payable	No fee payable
Friday 13 September	Not listed	No fee payable	No fee payable
Monday 16 September	Listed for trial; jury sworn and evidence called	Effective trial – day 1	Effective trial – day 1
Tuesday 17 September	Listed for trial; trial continues	Effective trial – day 2	Effective trial – day 2
Wednesday 18 September	Listed for trial; verdict and sentence	Effective trial – day 3	Effective trial – day 3

Jury sworn date

21. There are occasions where the empanelling and swearing of a jury takes place over a number of days. If this happens and evidence is subsequently called or read, the first day of trial is deemed to be the day the empanelment process commenced.

Trial and cracked trial main hearing fee

22. Under scheme C, the main hearing fee for cracked trials and effective trials covered a two day period. Under scheme D, the main hearing fee covers only a single day with a daily fee will be payable from day two onwards.



23. This change will have an impact on multiple defendant/indictment cases where there are main hearings on consecutive days. Under scheme C, such hearings may have been covered by the two day trial fee, or in circumstances where there was a fixed fee hearing, on a day following a main hearing.

For example –

- Day 1 – defendant A and B listed for trial – defendant A pleads Guilty, adj. for sentence (Cracked trial)
  - Day 2 – Listed for trial for defendant B – jury sworn and evidence called (Effective trial)
24. Under scheme C, if counsel had claimed for the cracked trial on day 1, they would not be able to be claim for the trial because day 2 of the main hearing fee overlapped with the trial. Under scheme D, counsel will be able to claim a cracked trial for day 1 and an effective trial for day 2 as the main hearing fee only covers a one day period. The rules in relation to elected and unelected cracked trials remain the same in scheme D.
25. Newton hearings and fitness to plead / stand trial hearings will be remunerated according to the same principles as trials. For example, if there is a daily fee payable after 1 September 2019 they will be deemed to be scheme D cases.

### Fixed fee rates

26. The fixed fee rates have changed and you will need to look at Annex 4 of the revised MoG to familiarise yourselves with the new rates. There are also a number of other changes.
- Stood out trial fee – The stood out trial fee not on application (FNR) fee is not payable under scheme D. All cases listed for trial where the matter is adjourned to a future date will now be remunerated using the code NEF
  - Bail application – The Bail application (BAP) fee is not payable under scheme D. Cases listed for Bail applications will now be remunerated as mention hearings (OHA). Where more than one defendant applies for bail at a bail application only one fee will be payable with the relevant number of defendant uplifts.
  - Bench warrant – The BWA fee is not payable under scheme D.
27. There are also two newly added fee codes, which are:
- BRE – Breach of a Crown Court Order (For cases listed as a Breach of a Crown Court order)
  - FCM – Further Case Management Hearing.

### Lengthy trials (over 40 days)

28. At present daily fees are paid at a reduced rate for days that trials last over 40 days. Scheme D will pay all daily fees at the same rate from day 2 until the conclusion of the trial.



**Expedited Payment**

29. In addition to the current circumstances where we will allow a payment to be made before the conclusion of a case, such as where a case is adjourned for a re-trial, Scheme D will allow early payment in the following circumstances:
- a) Upon request from counsel where sentence has been adjourned following trial for 4 weeks or more weeks
  - b) Upon request from counsel, after the conclusion of each effective trial in cases involving multiple trials
30. Where payment is requested by counsel in these circumstances, the CPS will pay all trial fees without delay. Once the sentence hearing has taken place and the case is concluded all other outstanding fees should be paid.

**The wider CPS Fees Review**

31. Scheme D reflects interim changes brought in part of the wider review with the Bar of CPS fee schemes. That wider review is due to report by the end of September 2019 and may result in further changes which will be communicated in due course.
32. Should you have any queries regarding this bulletin or any other fee related matter, please contact your Case Auditor or the [CBU@cps.gov.uk](mailto:CBU@cps.gov.uk)

**Wendy Pitsillides**  
**Head of Fees**  
**Court Business Unit**