



# **SERVICE STANDARD ON TIMELY CLAIM AND PAYMENT OF PROSECUTION FEES**

---

## **1. PRINCIPLE**

- 1.1 The principle upon which this Standard is based is that payment to an advocate for work actually and reasonably undertaken should be achieved without unreasonable delay as soon as is practicable following the conclusion of the case.
- 1.2 CPS policy is to pay bills in accordance with agreed contractual conditions, or where no such conditions exist, within 30 days of receipt of goods or services or the presentation of a valid invoice, whichever is later.
- 1.3 CPS instructs advocates, both counsel and solicitor advocates/agents to prepare and present cases for hearing in the criminal courts. Prosecution work funded by CPS falls broadly into 4 categories:
- Sessional work in the Magistrates' Court for which a whole list fee is payable;
  - Crown Court cases for which standard fees are payable;
  - Cases for which fees are pre-marked;
  - Cases for which fees are assessed ex post facto.
- 1.4 The principle of achieving prompt payment applies equally to each category but different arrangements will apply to meet the different methods by which fees are both claimed and assessed.
- 1.5 In order that the CPS may achieve prompt payment, the advocate accepts that all claims for payment must be submitted within 3 months of the conclusion of the case, or receipt of a Notification of Fees Form (NOFF), if later. Any claim from the advocate outside that time will be disallowed by the CPS unless good cause for late submission can be demonstrated.

## **2. GUIDANCE**

- 2.1 Guidance for the payment of fees is contained within the Fee Scheme which confirms that the CPS will use its best endeavours to make payment within 10 working days of the receipt of an agreed invoice. In order to facilitate prompt payment at the conclusion of the proceedings, every effort should be made to ensure that fees are agreed in advance of the hearing. Normal practice is to make one payment per case in respect of all advocates involved in the preparation and the presentation of the case. Where payment is due to more than one advocate it is the responsibility of CPS to indicate clearly on the NOFF to whom individual payment is owing.
- 2.2 It is the responsibility of the chambers to apportion the payment on receipt. More than one payment should only be made where:
- the advocates employed are from different chambers;
  - one advocate is not registered for VAT;
  - where separate advocates each play significant roles in the case (eg trial and retrial; leader and junior etc.);
  - where a staged payment has been agreed.
- 2.3 For the purposes of fee payment, conclusion of the proceedings means the date that sentence is passed. In addition, to avoid unreasonable delay, payment should also be made:
- where sentence is deferred, or final orders such as confiscation are to be delayed for a period of more than 2 months after verdict or plea;
  - in cases where a warrant is issued and there is no prospect for the immediate apprehension of the defendant;
  - in cases where a retrial is ordered and the case is not to be re-listed immediately.

### **Sessional Work in the Magistrates' Court**

- 2.4 Fees for sessional work in the Magistrates' Courts by counsel are reviewed periodically and are applied nationally. There are no set fees for solicitors which are locally negotiated.

### **Standard Fees**

- 2.5 Standard fees apply to about 80% of prosecutions in the Crown Court and subject to the number of appearances, are not normally discretionary. As such, these fees are amenable to speedy assessment and prompt payment.

### **Pre-marked Fees**

- 2.6 Pre-marked fees can apply to individual cases for hearing in all criminal courts. They are individually assessed both in respect of brief fees and refreshers and the arrangements are such to promote prompt assessment and payment.

### **Ex Post Facto Fees**

- 2.7 In the larger cases attracting Case Management Plans it may not be possible to agree fees in advance of the hearing, but broad preparation times should regularly be agreed and updated, and where possible an hourly preparation rate agreed to be applied in the assessment.

## **3. PROCEDURE**

### **Sessional Fees in the Magistrates' Court**

- 3.1 Agent solicitors and barristers are engaged on a personal basis and their commitment should not be transferred to any other person without the prior approval of a Crown Prosecutor. Barrister agents should be included in the circuit lists of advocates approved to prosecute by the Attorney General.

- 3.2 In respect of each appearance, the advocate should complete a daily court record or attendance certificate and submit an invoice specifying the name of the advocate, the court sitting(s) together with the times, and the fee claimed.
- 3.3 The correctly completed invoice should be submitted within 10 working days of the conclusion of the sitting to the CPS Branch that issued the instructions to prosecute. No claim should be submitted more than 3 months from the date of sitting.
- 3.4 CPS should confirm that the claim is in accordance with the prevailing rates and authorise payment to be made by the Area Finance Office. The CPS Branch should aim to perform this authorisation within 5 working days of receipt of the invoice. The Area Finance Office must aim to pay within 10 working days of the Branch receiving the correctly completed invoice.

#### **Standard Fees in the Crown Court**

- 3.5 At, or shortly before, the conclusion of the case the caseworker at court should ensure that all items, for which separate payment is required, have been recorded on the fee log. The advocate should ensure that similar endorsements have been made on the brief backsheet and, where possible, should check these with the caseworker against the fee log so as to avoid additional claims for work omitted. To facilitate prompt payment, the endorsed brief backsheet must be left with the CPS representative at the court centre. Where this is not possible, the brief should otherwise be returned to the appropriate CPS office within 7 days.
- 3.6 The advocate will need to have been informed by CPS of the overall fees, witness expenses and CPS costs prior to the conclusion of the case to inform any application for costs against the defendant in the event of a conviction.
- 3.7 Within 5 working days the caseworker should endorse the amounts to be paid on a NOFF and forward the same to the advocate or his clerk. The advocate should raise an invoice to match the details contained in the NOFF, and quoting the unique NOFF reference number, forward the invoice to the CPS Area Finance Office whose address is shown on the NOFF.

- 3.8 The advocate, or his clerk, should aim to send the invoice within 5 working days of receipt of the NOFF. If the NOFF is not received within 10 working days of the conclusion of the case, the advocate or his clerk should contact the caseworker at the originating Branch by telephone or letter to ascertain the cause for delay. An invoice should not be issued in advance of receipt of the NOFF as this is contrary to the agreed procedure and will simply add to the delay.
- 3.9 No invoice should be issued, or submitted, more than 3 months after the conclusion of the case and only in exceptional circumstances will invoices submitted after this period be considered. The Area Finance Office must aim to pay within 10 working days of receipt of the correctly completed invoice.
- 3.10 Where issue is taken with the content of the NOFF, enquiries should be made by telephone or in writing with the CPS caseworker at the originating Branch. Where necessary, and where amendment to the original NOFF is not feasible, the original NOFF should be cancelled by the Branch and a further form issued setting out the agreed amount before a fee note/invoice is forwarded to the Area Finance Office.
- 3.11 It is important that any invoice from an advocate tallies with the information on the NOFF to enable prompt payment to be made. If it is necessary to amend or cancel the original NOFF it is essential that the Area Finance Office is informed by the Branch in writing so that the records on the Counsel Fee Register can be updated. No invoice should be issued or submitted more than 3 months after the amended NOFF has been received by the advocate or his clerk.

### **Pre-marked Fees**

- 3.12 As for standard fees, CPS must aim to have assessed and agreed the fees in pre-marked cases at, or immediately before the conclusion of the hearing, again because of the requirement to accurately assess any application for costs against the defendant. In cases where fees are marked at £5,000 or more, a Case Management Plan (CMP) should be utilised.

- 3.13 Records of any adjustments to the pre-marked fees must be retained in the case file.
- 3.14 At the conclusion of the case, the advocate should ensure that similar endorsements have been made on the brief backsheet and, where possible, should check these with the caseworker against the fee log so as to avoid additional claims for work omitted. To facilitate prompt payment, the endorsed brief backsheet must be left with the CPS representative at the court centre. Where this is not possible, the brief should otherwise be returned to the appropriate CPS office within 7 days.
- 3.15 Subject to the delegated authority of the caseworker dealing with the prosecution, there should be no unreasonable delay in completing the NOFF which should be undertaken within 5 working days of conclusion of the hearing.
- 3.16 The advocate, or his clerk should reconcile the NOFF with their records and raise an invoice quoting the NOFF serial number which should be despatched to the Area Finance Office shown on the form within 10 working days of receipt of the NOFF. The copy NOFF should be retained by the advocate or his clerk and endorsed to indicate that an invoice has been submitted.
- 3.17 The Area Finance Office must aim to pay within 10 working days of receipt of the correctly completed invoice. Any enquiry concerning the content of the NOFF should be directed to the CPS officer from the originating Branch before an invoice is raised.
- 3.18 The guidelines for notification, claim and payment of pre-marked fees are the same as those for standard fees.

### **Ex Post Facto Fees**

- 3.19 Case Management Plans should be employed in all cases where agreement has been made to assess fees ex post facto. The advocate or his clerk should aim to submit the agreed action plan and work record with the brief backsheet, fee note/invoice (and note for taxation if applicable) to the reviewing prosecutor/caseworker within 10 working days of the conclusion of the case. No invoice should be issued more than 3 months after the conclusion of the case.

- 3.20 Within a further 10 working days, the reviewing prosecutor/caseworker should consider the fees claimed against the accompanying documentation and assess a payment that is both fair and reasonable. Details of the fees it is proposed to pay should be passed to the advocate or his clerk, by telephone, or in writing if necessary, and efforts made to secure agreement. Records of negotiations should be retained as part of the Case Management Plan.
- 3.21 Where fees are accepted in accordance with the original claim, a NOFF should be raised by the caseworker/reviewing prosecutor, and sent, accompanied by the fee note/invoice direct to the Area Finance Office to avoid further delay. The Area Finance Office must aim to pay within 10 working days of receipt of the correctly completed invoice. Where agreed fees differ from those originally proposed, a NOFF should be raised in the revised amounts and forwarded to the advocate or his clerk within 5 working days thereafter.
- 3.22 Where agreement cannot be reached, the review and appeal procedures set out in the Fee Scheme should be applied.

Headquarters  
50 Ludgate Hill  
London  
EC4M 7EX  
Tel: 0171-273 8088  
Fax: 0171-329 8165  
DX: 300850 Ludgate EC4