



HM Crown Prosecution
Service Inspectorate

A value for money inspection of the application of the CPS graduated fees scheme

Executive Summary

May 2011



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Contextual factors and background

The operation of the Crown Prosecution Service (CPS) graduated fees scheme (GFS) has substantial budgetary significance for two main reasons. First, it is the method used to calculate fees paid to external advocates representing the CPS in the Crown Court, in all but very high cost cases (VHCCs). In 2009-10 the CPS spent approximately £174.6m on presenting cases in the Crown Court, of which approximately £102.9m was paid in fees to external advocates under the GFS. These costs need to be set in the context of the overall CPS spend which was £725m for 2009-10.

Secondly, GFS is the method used to calculate the notional savings achieved by the deployment of in-house advocates in the Crown Court. As such, GFS payments account for the majority of prosecution costs payments (which form a significant part of the national budget) and the allocation of non-ring fenced running costs between CPS Areas. Therefore, it is essential that the operation of the scheme delivers value for money, especially in the current context of reducing resource levels across public service.

Summary of findings

The average GFS spend per case (unit cost) has varied significantly between CPS Areas, ranging from £580 to £1,262 in the last three years. Higher unit cost is not always attributable to external factors. Those Areas with higher unit costs are generally the ones with less effective casework control, and the greatest potential for savings. Insufficient analysis has been carried out by the CPS to identify the reasons for this.

Inspectors assessed the application of the GFS in six CPS Areas, examining 162 cases which had associated GFS costs of £1,300,662. Potential savings in those cases were conservatively calculated to be £202,573, or 15.6% of the total fees paid to external advocates on these cases. The clear implication is that significant savings are available nationally, although it would be statistically invalid to assume that these would be at precisely the same level across the country, and any attempt to extrapolate these figures should be avoided.

The CPS Court Business Unit (CBU) provides a focal point at headquarters level for all queries in relation to the GFS, and the experience, advice and training offered by the CBU was well received by Area staff. The CBU conducts one day audits of Areas and some more in depth audits of the systems Areas employ on prosecution costs. The main recommendations relating to the processing of GFS claims from the CBU reports analysed were broadly aligned to most of our findings.

CPS Areas are beginning to understand that proper management of cases under the GFS can provide real savings to the overall budget. However, performance regimes are not sufficiently focussed on this yet. For example, there is limited control over cases dealt with by the complex casework units (CCUs). Payment of fees incurred on CCU cases is referred back to the Area, which exposes CCUs to the risk of profligacy. A more robust system of reporting current and projected expenditure by CCUs needs to be introduced.

Very few CPS lawyers or caseworkers understand how GFS costs are calculated, and consequently they have a limited understanding of the costs implications of decisions, actions, delays and errors. This reduces capability to control costs and check waste. In the short term, training is essential to overcome this knowledge gap. In the longer term, a cultural shift is needed to incorporate costs implications into everyday casework systems, decisions and actions, without undermining the primacy of the interests of justice.

Criminal justice partners also need to be made aware of the costs implications of their casework decisions. The production of lengthy documents when summaries would suffice has a direct impact on cost. For example, the provision of a full transcript of interview with the defendant is not always necessary, especially when the defendant declines to answer questions, given that a copy of the tape will be available.

Administrative weakness within the CPS undermines robust operation of the payment system. Fees clerks play a vital role in ensuring accurate fees are paid to external advocates and they generally have a very good working relationship with barristers' chambers. However, incomplete or illegible case records make it more challenging to assess fees, or successfully dispute inaccurate claims at the conclusion. Very few fees clerks are monitored or checked in their work and there is a lack of clarity about the levels and purpose of financial delegation. Too much reliance is placed on fees clerks' expertise by Area staff and management.

By its nature, GFS does not pay advocates pro-rata for work actually done. Anomalies therefore arise, and these include cases where, for example, the fee for a guilty plea can exceed the fee for a trial. Also, when documents are provided to the advocate in error, they can be paid for reading them, sometimes more than once.

Specific potential savings identified

The number of pages forming the prosecution case can substantially affect the cost of presenting it in court. In 29% of the sampled cases the page count could have been reduced, and this accounted for 50.5% of total potential savings identified. Staff and systems need to focus more effectively on appraising critically documentation received before sending it to the advocate. This should be an inherent part of the strategic analysis of any case.

19.4% of potential GFS savings in the sample were identified from cases incurring Crown Court advocate fees when they ought not to have reached the Crown Court at all. Incorrect charges, indictments and a general lack of direction, control and review by lawyers accounted for the majority of these cases.

We found examples of the CPS failing to follow its own guidelines controlling the selection of more than one advocate. In each case, a second prosecution advocate had been instructed without sufficient justification and contrary to the proper application of the relevant criteria, leading directly to unnecessary cost. There was also a lack of consistent recording, monitoring and analysis of such decisions.

6.3% of potential GFS savings in the sample arose because inaccurate fees were not challenged or fees were processed incorrectly.

3.9% of total potential savings in the sample resulted from unnecessary court hearings, late decisions to accept pleas, or late guilty pleas arising from a lack of proactivity and progression in seeking the early disposal of cases.

Conclusions

The way the graduated fees scheme currently operates is not offering the best value for money. The lack of knowledge, management and control over casework, and inaccuracy of fees folders leads to unnecessary costs and inaccurate payments. Our conclusion after carrying out this inspection is that the scheme is far too complex. The report also illustrates that it is too onerous in terms of the amount of checking and auditing required. The inspection has highlighted this complexity and as to how savings could be best achieved. The potential savings could be better used within the CPS to improve the delivery of justice.

A summary of our recommendations and good practice is set out below.

Priority recommendations

1 The CPS should take action to ensure that prosecutors understand the principles of the GFS system and the effect that casework decisions and case handling have on the costs arising from it (paragraph 3.40).

2 Groups should keep records of all applications for multi-advocate cases, whether or not they are approved, so that appropriate analysis can be conducted (paragraph 3.19).

3 The CPS, in reviewing the application of the GFS, should address circumstances which give rise to unintended and disproportionate payments (paragraph 3.31).

4 The CPS should conduct further analysis to understand the wide variation in GFS average costs across Groups and Areas and take action to reduce average costs where it is evident better controls are needed (paragraph 4.21).

Recommendations concerning process and management of the GFS

1 There should be regular management checks and dip sampling of fee payments. Feedback to fees clerks should be provided (paragraph 5.16).

2 The CPS should refresh guidance clarifying the appropriate levels and purpose of financial delegation for all individuals involved in fee payments and raise awareness and understanding (paragraph 5.16).

3 There should be regular management checks of paralegal completion of the finance folder and the FIST (paragraph 5.25).

4 Groups should ensure a more robust system of reporting current and projected expenditure by CCUs (paragraph 5.4).

Good practice

1 Areas working with partner agencies to ensure only appropriate evidence is served (paragraph 3.34).

2 The experience and advice offered by the CBU (paragraph 4.13).

3 Area fees newsletter providing up to date information on fees (paragraph 5.8).

4 Ownership of cases for fees purposes by paralegal officers (paragraph 5.25).
