



HM Crown Prosecution
Service Inspectorate

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

May 2011



Abbreviations

Common abbreviations used in this report are set out below. A glossary of terms used is also attached at annex A.

ABM	Area business manager
CBU	Court Business Unit
CCP	Chief crown prosecutor
CMS	Case management system
CPS	Crown Prosecution Service
FIST	Financial information sheet
GFC	Graduated fee claim
GFS	Graduated fees scheme
HMCPsi	Her Majesty's Crown Prosecution Service Inspectorate
NAE	Notice of additional evidence
PCMH	Plea and case management hearing
VFM	Value for money
VHCC	Very high cost cases

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Chief Inspector's foreword

The examination of the graduated fees scheme (GFS) is the first dedicated value for money (VFM) inspection HMCSI has conducted. We have developed a new inspection framework specifically designed to examine VFM concepts and these principles will feature in all our future inspections.

As with other organisations in the public sector, the CPS faces unprecedented financial challenges. In making the difficult financial decisions ahead the Service will need to ensure it is achieving the best value for money from all its resources and systems. Payments to external advocates make up a very significant percentage of the Service's total budget.

This inspection has revealed that there are significant savings to be made in the application of the GFS. Whilst all legal decisions must comply with the Code for Crown Prosecutors, managers, lawyers and caseworkers need to improve their cost awareness, and understand the costs implications of their casework decisions and processes. This will require something of a cultural shift in the Service's approach to the management and control over prosecution costs paid via GFS, but it will reduce costs, not only for the CPS, but across the criminal justice system.

The findings and recommendations in this report build upon some of the good practice already identified by the Court Business Unit. 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 graduated fees 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.



1 Introduction

1.1 This report details the findings of Her Majesty's Crown Prosecution Service Inspectorate (HMCPISI) arising from a value for money inspection of the graduated fees scheme (GFS) conducted in September and October 2010.

1.2 The GFS was implemented in 2001, and has been revised from time to time. There is a separate, but similar GFS for defence advocates, administered by the Legal Services Commission.

1.3 GFS is explained in detail where necessary throughout the report. In brief, it is the method for calculating the fee payable to self-employed advocates instructed by the CPS in the Crown Court, except where the case is classified as a very high cost case (VHCC). It works as a standard calculation based on pre-set rates including the category of offence, the grade of advocate and type of Crown Court hearing.

1.4 It is important to note from the outset that the GFS is one of three main constituents which make up the overall CPS prosecution costs budget. These are fees paid to external advocates under the GFS, the costs of in-house lawyers undertaking work in the Crown Court which is also calculated (as savings) under the GFS, and VHCCs. Other expenditure such as witness expenses, interpreter fees, and expert witness costs also form part of the overall prosecution costs budget. In 2009-10 the CPS spent approximately £174.6m on presenting cases in the Crown Court¹. Of that approximately £102.9m was spent on external advocates through GFS. These costs also need to be set in the context of the overall CPS spend which was £725m for

2009-10. Annex C provides a more detailed breakdown of costs over the last five years.

1.5 GFS payments account for the majority of prosecution costs payments and it is therefore essential that the application of the scheme delivers value for money, especially in the current context of reducing resource levels across the public service announced in the Government's Comprehensive Spending Review².

1.6 The trigger for this review was the clear disparity in prosecution unit costs (whose major element is normally the level of GFS spend) between CPS Areas in recent years. This disparity indicates that GFS controls could be tighter in some Areas, and that potential savings exist in every Area. With this in mind, the aim of this inspection has been:

"To assess the effectiveness of the operation and management of the graduated fees scheme in selected Areas, and whether a value for money approach is consistently applied and identify where potential savings can be made."

1.7 Put simply, value for money (VFM) is about obtaining the maximum benefit with the resources available and achieving the right local balance between economy, efficiency and effectiveness³. This means that VFM includes not only the cost of services such as advocacy, but also takes account of the mix of cost with quality, resource usage, fitness for purpose and

¹ "Presenting" includes all work done by the advocate in preparation and conduct of court hearings. This covers every type of hearing and all work connected with it, and distinguishes "presentation" from "prosecution".

² The coalition Government's Comprehensive Spending Review was announced on 20 October 2010 and included the need for the CPS to make a 25% saving on its budget over four years.

³ The framework for the VFM inspection is provided at annex E and a full definition of value for money for the purposes of this inspection is provided at annex F.

timeliness to judge whether or not, together, they constitute good value. In keeping with these principles, this inspection has focussed on identifying potential savings that could have been made within the GFS, and then identifying the underlying causes, so that improvement can follow swiftly. We have concentrated on effectiveness of the current GFS and whether costs can be controlled. It is important to note, however, that the inspection's aim was to examine whether justice was delivered appropriately and in a way that delivered value for money. We therefore refer in this report to controlling costs rather than reducing costs.

1.8 The review team examined the application of the GFS in six CPS Areas which were selected according to the frequencies with which they have appeared in the top and bottom quartiles of prosecution unit cost over the period of three years to March 2010. Three Areas from the upper quartile and three Areas from the bottom quartile were chosen. From these Areas 162 files were examined and potential savings were calculated in terms of decision-making, casework, record keeping and payment processes. A more detailed account of the methodology we used to gather our evidence and calculate potential savings is provided at annex B.

1.9 The total potential savings identified were £202,573, or 15.6% of the total GFS costs on the files we examined. The potential savings identified are significant, however it would be statistically invalid for the level of potential savings across our file sample to be extrapolated across the national caseload: this is because our file sample was not representative of all Crown Court casework⁴.

Structure of the report

1.10 The report is structured to identify the categories and relative significance of the potential savings in chapter 3, then to identify some of the causes by reference to the roles and responsibilities of those operating the system and current governance structures in chapters 4 and 5.

1.11 The report also draws on some real examples taken from our file examination and reproduced in the form of case studies. Some worked examples are also included to demonstrate how fees can fluctuate in certain given circumstances. It is hoped that the combination of real casework examples and hypothetical worked examples will provide CPS staff with a deeper understanding of how it is possible to control costs on a day to day basis. We also make a number of recommendations designed to address key concerns arising out of our inspection. The report also identifies areas of good practice.

Acknowledgements

1.12 The Chief Inspector and inspection team are grateful for the co-operation, support and assistance of all those in the CPS Areas with whom they came into contact throughout the inspection, from the preparation of case files and fees folders for examination to the arrangements necessary to conduct interviews. We are particularly grateful to the Court Business Unit who helped prepare lists of appropriate cases and were helpful in their exchange of information, data and knowledge.

⁴ Refer to annex B for type of cases examined.

2 Summary and overview of findings

Introduction

2.1 Inspectors examined 162 files with an associated total GFS cost of £1,300,662. Within this sample, inspectors identified potential savings of £202,573, or 15.6% of the GFS spend on the same files. Whilst many factors can have a bearing on fees paid to advocates, just over 50% of these potential savings were as a result of documents and statements (page count) being unnecessarily included as part of the prosecution case.

2.2 The CPS has a single budgetary provision therefore any growth in prosecution costs, will ultimately have to be funded from the administration costs budget⁵. Unless prosecution costs expenditure can be better controlled pressure will be put on other essential resources and operational delivery. Overall, if the recommendations made in this report are implemented, significant savings could be achieved.

Findings

Factors affecting the cost of fees paid

2.3 The number of pages served as evidence can substantially affect the cost of the case. In 29% of the sampled cases the page count could have been reduced. The potential saving was over £100,000 representing 50.5% of total potential savings identified. A lack of direction, control and ingenuity with regard to reducing the page count was also apparent.

2.4 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.

2.5 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.

2.6 6.3% of potential GFS savings in the file sample arose because inaccurate fees were not challenged or fees were processed incorrectly.

2.7 Fewer fees will be incurred if the case can be dealt with simply and speedily. This can be achieved by identifying cases which are likely to be guilty pleas or, based on the evidence, should be guilty pleas and proactively ensuring these are dealt with at the earliest opportunity. 3.9% of total potential savings in our sample were as a result of unnecessary court hearings, late decisions to accept plea or late guilty pleas.

2.8 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.

⁵ This budget is used to pay staff wages and generally for operational use, facilities, IT etc.

Governance of the GFS at national level

2.9 The CPS Court Business Unit (CBU) provides a focal point 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 from all the reports analysed were broadly aligned to most of the findings in our inspection, although CBU audits did not examine casework decision-making. The results from these informed amendments to policy, best practice and guidance.

2.10 The average GFS spend per case varied significantly in Areas over a three year period from £580 to £1,262. Our findings provide a clear correlation between Areas with higher spend per case and those having less control over GFS spend. There was little satisfactory analysis completed by Groups or the CPS to ascertain the reasons for such disparity in average spends.

Management and delivery of the GFS at Group and Area level

2.11 The Areas visited did not have any control over cases dealt with by the complex casework units (CCUs) but payment of fees incurred on CCU cases are referred back to the Area for payment, which exposes CCUs to the risk of profligacy. A more robust system of reporting current and projected expenditure by CCUs needs to be introduced.

2.12 Groups and Areas are beginning to understand that proper management of cases under the GFS can provide real savings to the overall budget. However, performance regimes and understanding of how costs can be influenced remain weak. It was clear that an

ingrained aspect of CPS culture was the notion that GFS costs had to be incurred and that prosecutors had little control over them.

2.13 Fees clerks play a vital role in ensuring accurate fees are paid to advocates and had a very good working relationship with chambers, managing to resolve disputed claims without further escalation to senior management. Whilst most fees are simple to calculate some can be complex. Accurate and speedy calculation of fees was hampered by administrative failures during the life of the case which included gaps in the endorsements on the fees folders and resulted in fees clerks having to piece together what fees were due. Very few clerks had any monitoring or checking of their work by Area management and there was also a lack of clarity about the levels and purpose of financial delegation. Too much reliance was placed on fees clerks' expertise by Area staff and management.

2.14 The inspection found that nearly all lawyers, including crown advocates, were unaware of how GFS costs were calculated and the cost implications of prosecuting a case, even though it is clear that the majority of potential savings found could have been influenced by CPS lawyers. Training is therefore imperative.

2.15 Too many paralegal officers were not fulfilling their responsibilities with regard to the GFS. Financial information sheets and the fees folder were incomplete or not even attached to the case file, endorsements were missing and page count was not agreed with the advocate at court in all cases. There was generally a lack of management control or intervention over paralegal staff with regard to accounting processes which exposes the CPS to risk of making inaccurate payment.

Conclusions

2.16 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 GFS 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.

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).



3 Factors affecting the cost of fees paid

Brief overview of system

3.1 The scheme has pre-set fees for the class of offence, the type of hearing, whether it is a jury trial, a cracked trial, or guilty plea. The fees paid are further graduated according to the category of advocate presenting the case, either junior advocate, leading junior, or Queen’s Counsel (QC). Each type of hearing has its own rules on base fee, refresher, evidence uplift and defendant uplift and so on⁶.

3.2 The CPS payment system for work done in the Crown Court requires a fees log (financial folder) to be updated with each item of work carried out for which payment can be claimed. These include details of the type of hearing, conferences, notices of additional evidence etc. The log is a financial record for accounting purposes and the items recorded must be accurate.

3.3 In order to issue payments, a fee information sheet (FIST) is completed from the information contained in the fees log. The level of payment is automatically calculated by an IT application. The FIST is then reconciled to the invoice sent from the advocate’s chambers, called the graduated fee claim (GFC). The completed FIST is then forwarded to the service centre⁷ for payment.

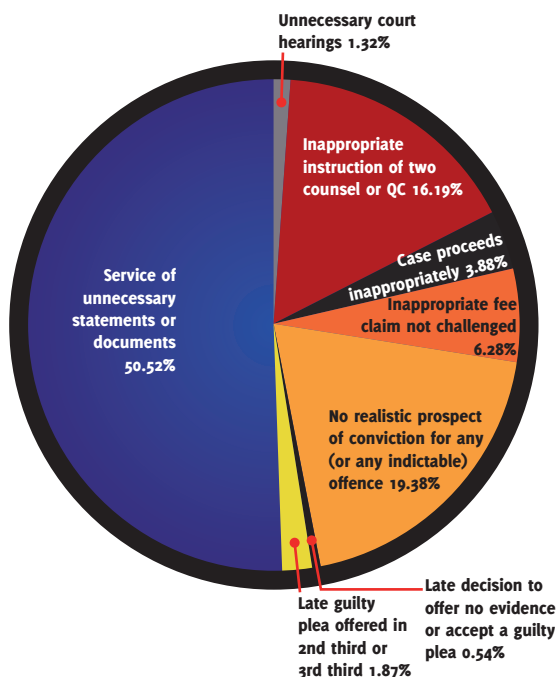
6 A base fee refers to the fee paid to prepare for the case and includes presentation on day one of the trial. A refresher is payable in any subsequent trial days. Uplifts refer to extra fees paid if there is more than one defendant or more than one case handled. Other uplifts may be applicable according to the type of hearing.

7 The CPS are currently piloting an automated system which will pay advocates without the need for the fee to be processed by the service centre.

Overview of potential savings

3.4 Our inspection revealed that there are many factors which can have a bearing on the eventual cost of fees paid to external advocates. Some are much more critical than others. It was clear, however, that in nearly all of the cases where savings could have been achieved that there was more than one factor which comprised the potential savings in a particular case.

3.5 The 162 files that were examined by inspectors represented a total GFS spend of £1,300,662.16. Inspectors discovered potential savings of £202,573.23, which represents 15.6% of the total GFS spend in this sample. These potential savings fall into eight main categories in the proportions set out in the diagram below. The overwhelming majority of potential savings (86.1%) arise from the quality of decision-making, reviews and case analysis, most notably the inclusion of unnecessary documents in the prosecution case (50.5%).



Page count

3.6 From the point at which the advocate is formally instructed, the eventual GFS cost can be greatly affected by the size of the prosecution case; expressed as the number of pages containing evidence expected to be called at trial⁸. In simple terms, this is the total number of pages provided to the advocate and served on the defence and court as used material, including notices of addition evidence. It is commonly referred to as “page count”.

3.7 The page count should include the statements of the witnesses to be called, and the exhibits they need to produce, which may include documents seized, or those created as part of the investigation, such as the record of taped interview of the defendant, or records arising out of mobile phone interrogation. Any such items which are not needed to prove the case should be classed as unused material, which is not included in the page count. Therefore, if pages of material are wrongly assessed as being necessary to prove the

prosecution case, this incurs an unnecessary cost which is also affected by the nature of the charges, the level and number of advocates conducting the case, and the type of hearing.

3.8 In 29% of cases examined in our file selection, page count could have been reduced, representing 50.5% of the potential savings identified. From our file examination, therefore, ensuring a page count appropriate to the case was the single most influential factor in controlling costs.

3.9 Whilst the rates paid for the GFS have not altered since 2001, page counts have increased substantially, partly due to the increased use of sophisticated electronic investigation and evidence gathering techniques, including telephone, computer, visually recorded interviews and CCTV evidence⁹. The increased number of pages directly affects the level of payment under GFS, as the more pages that are generated in a case, the greater level of remuneration.

⁸ If there is a trial the first 50 pages of evidence and ten witnesses are included within the base fee.

⁹ CCTV evidence may need to be viewed by advocate, but may also produce page count in the form of ‘stills’ from the CCTV footage.

Worked example A

The below example demonstrates how different page counts can significantly add to prosecution costs. The example uses the template of a single defendant, charged with serious firearms offences, which proceeds to trial. The figures in the table represent only the ‘page count’ element of GFS costs, and not the total fees payable for prosecuting the case.

	100 pages	500 pages	1,000 pages
Junior	£74	£666	£1,406
Leading junior	£93	£837	£1,767

3.10 HMCPSI accepts that some items are properly classified as a necessary part of the case and then pass into the unused material bundle as part of the natural course of the litigation process. Conversely, some material is rightly called as evidence to add colour or context to a case when it is not strictly necessary to prove the elements of the offence. However, the volume of unnecessary documentation identified in the inspection provides a clear implication that the decision to include material in the prosecution case is sometimes taken without proper consideration of the context of the case or the legal principles which dictate how the prosecution must prove its case.

3.11 Sometimes material is passed direct to the advocate by a paralegal officer without a real review, often due to apparent lack of time¹⁰. Where a full review of the material takes place, it is often under time pressure. Both situations can lead to unused material being wrongly classified as part of the prosecution case. Pressure on resources can also lead to the material being served without review, expressly leaving advocates to decide whether it should form part of the case. Even where the material is correctly classified as part of the prosecution case, the process for authorising this, and the subsequent cost, should not leave the control of the reviewing lawyer.

¹⁰ This includes the late receipt of files or evidence from the police, or the service of documents in order to comply with judges orders.

3.12 We often found that full transcripts of suspect interviews were served along with a summary or that full “no comment” interviews were served. Sometimes this may be appropriate, but often this is not necessary before the advocate advises that it is needed to cross examine the defendant, especially given that the tape(s) of interview are commonly available to the advocate. Likewise, transcripts of video taped interviews of witnesses are not generally necessary to prove the prosecution case when a full witness statement has been prepared and signed. Where such evidence is to form part of the prosecution case, it can often do so in a shortened form, such as a summary, a schedule, or in the text of an admission¹¹. Further examples of unused material being classified as part of the prosecution case includes memory refreshing documents being placed in the evidential bundle.

3.13 Identical issues also arise where electronic media material is part of the prosecution case, such as images on a CD-ROM or computer hard drive, and where large tranches of documents are grouped onto electronic format for transmission (electronic transfer of evidence – ETE). Some CPS Areas are already alive to this, but there is a risk that the potential savings of ETE could be reduced by ineffective review of the material. It was reported that entire computer hard drives have been exhibited unnecessarily in the past, at significant cost.

¹¹ These are referred to as section 10 admissions (section 10 Criminal Justice Act 1967).

Case study 1

This case study highlights the need to give careful consideration when serving raw data.

Nine defendants were charged with burglary, their purpose to steal high value cars. The raw mobile phone data amounted to over 4,000 pages, all of which was included in the prosecution bundle. This represented over half the pages served in the case and cost the CPS in excess of £15,000. The majority of the documentation served was extraneous and not required as evidence necessary for the prosecution to prove its case.

Case study 2

This case study highlights the need for lawyers to produce and serve evidence in the most value for money way possible.

The defendant was charged with supplying a class A drug. A report of SMS phone texts was served containing 338 pages – all texts received on the defendant’s mobile phone over the relevant period when the prosecution allege drug supply took place. A statement from the police officer who analysed the evidence was served in support, highlighting 41 pages as being of evidential significance. The other pages were of no apparent evidential value and appertained to social conversation. Only those pages that were relevant to the prosecution should have been served and the rest should have been served as unused evidence. The consequence of serving the full phone text report was that an additional cost of £1,200 was unnecessarily incurred.

Charging and ongoing review

3.14 A decision to lay a charge which is not compliant with the Code for Crown Prosecutors amounts to a potential GFS saving of 100% in almost all cases. In other words, all resource allocated to that case could have been utilised elsewhere. Likewise, selection of the wrong either way or indictable only charge, when a summary only charge would have been Code test compliant, will always amount to a potential GFS saving of 100%, although there would have been a set off for conducting the case in the lower court. 19.4% of potential GFS savings in the file 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.

3.15 The GFS distinguishes between cases discontinued early in the process and those that are discontinued at a later stage. If a prosecution is to be discontinued, then early active management of that case will result in a lesser fee being paid as can be seen from the worked example below:

Worked example B

The below example assumes that a defendant has been charged with a serious sexual assault but that there is no realistic prospect of conviction. Whilst the initial charging decision may have been correct leading to a charge, the subsequent case handling fails to recognise the defects in the case. The example illustrates the differing costs involved at various stages and demonstrates the importance of continued proactive control and management of the case to ensure that there is a realistic prospect of conviction and consequently control over costs. The example assumes 1,000 pages of evidence, one defendant, requiring 15 witnesses and was prosecuted by a junior alone.

	Discontinued prior to committal	Discontinued in 1st third ¹²	Discontinued in 3rd third
GFS fees incurred	Nil	£2,047	£5,001

¹² Whether a case is discontinued in the 1st third (lower fees) or the 3rd third (higher fees) is determined by the start date, the end date and the main hearing date. The time between the start date and the end date are then divided into thirds and fees are calculated according to which third the end dates falls into.

Allocation of advocate

3.16 In 2009-10, the CPS spent over £45m, or more than a quarter of its total prosecution costs budget, on cases where more than one advocate was appointed. These cases represent the most serious and complicated cases the CPS prosecutes and consequently attract a high level of fees. Whilst the number of multi-advocate cases accounted for less than 1% of the finalised caseload, it has doubled from 686 to 1,292 cases between 2005 and 2010. Decisions to allocate

more than one advocate therefore have very significant budgetary impact, which is reflected in the detailed guidance¹³ issued on instruction of multi-advocates in 2009 and revised in 2010, known as the decision tree. The table below shows the substantial increases in the fees paid over the last five years for multi-advocate cases. Costs have escalated by over £26m, an increase of 137%.

¹³ CPS Gateway Notice BDD 112/09 and Best Practice Guidance 2010.

	2005-06	2006-07	2007-08	2008-09	2009-10
Gross paid in multi-advocate cases	£19,069,398	£29,074,458	£47,839,635	£48,986,973	£45,231,098
Number of payments	686	936	1,460	1,458	1,292
Average cost per payment	£27,798	£31,062	£32,767	£33,599	£35,008

3.17 In most file sample cases one advocate was instructed. Where more than one advocate was instructed this was generally in accordance with the criteria. In all of the six Areas visited, the process for appointing multi-advocates was apparently understood, and lawyers were clear with regard to their responsibilities. However, cases where decisions were made in breach of the prescribed process, and these had a substantial impact, accounted for 16.2% of total potential savings identified in the sample. It follows that a handful of these cases would impact significantly on any Area's overall GFS costs.

Case study 3

This case study demonstrates the need to make good judgements when deciding which advocate to instruct. It also emphasises the need for sound decision-making throughout the case.

This case dealt with an allegation of violence said to have been committed by a family member upon a vulnerable victim. The prosecution initially instructed a sole junior advocate. This decision was inappropriate because although the case was not sufficiently complex or voluminous to justify the use of two advocates, it was sufficiently sensitive to merit a QC acting alone. The defence had instructed a QC. Therefore, when the trial judge commented that the prosecution ought to be conducted by a QC the CPS then instructed a QC *in addition* to existing junior advocate. The junior advocate's trial fee, therefore, was an unnecessary cost.

Excluding expert witness costs, the legal decision-making and case preparation included wasted document costs of £254.56 and advocate court attendance costs amounting to £1,295.00, neither of which ought to have been incurred.

3.18 Only one Area had a requirement to keep a log of requests for multi-advocates, although most chief crown prosecutors (CCPs) would have been able to track back the number of requests that had been made, if required to do so. No statistics were readily available of applications for multi-advocates that were refused. It was therefore not readily possible to determine the robustness of decision-making between CCPs.

3.19 Because instruction of multi-advocates can significantly affect prosecution costs for a case, it is important to conduct analysis of the types of cases and reasons for such requests and whether approval for multi-advocate cases is consistent across the Group, including those from the CCU.

Priority recommendation

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

Defendant uplift

3.20 There is a danger of a substantial increase in costs in multi-defendant cases due to the formulaic way the GFS calculates fees. The GFS pays a supplement to advocates in multi-defendant cases; an uplift of 10% is payable for each and every additional defendant, as long as they are tried together on the same indictment.

3.21 Where defendants who could be joined on the same indictment are prosecuted separately, then the uplift does not apply but they are treated as two separate cases, each attracting its own fee; this is so, even where the prosecution evidence in both cases is substantially the same. It is important therefore for the CPS lawyer to consider joinder and severance issues properly and promptly to help control GFS costs.

3.22 Overall, from our inspection, multi-defendant prosecutions, along with serious and complex cases, emerged as the highest-risk case category, in terms of escalating GFS costs. Consequently, cases where there are more than six defendants, involving over 2,000 pages of evidence or which have three or more indictments arising from a single case, should be referred to the Head of Fees who will determine whether the case should be removed from the GFS and remunerated in accordance with the VHCC arrangements¹⁴.

Case study 4

This case study demonstrates how a mix of various issues affecting fees, if not managed properly, can significantly add to costs.

Three defendants were prosecuted for possessing cocaine with intent to supply and kidnapping.

- In the Crown Court there were 11 hearings that related only to applications for bail or to vary bail conditions. Each cost the CPS a minimum of £54.64, and could have been covered by in-house prosecutors.

- The advocate incorrectly claimed a 10% defendant uplift for most of the hearings, when each only involved one of the defendants.
- Unnecessary evidence amounting to 537 pages was served including over 441 pages of technical mobile phone evidence.
- 203 pages of various video identification procedure booklets were served as evidence, which could have been compressed into three pages of section 10 Criminal Justice Act 1967 admissions.
- The trial was effective but not completed as the jury were discharged, and at the later re-trial acceptable pleas were offered. Under the GFS scheme this meant that the advocate could legitimately claim twice for the 537 pages of unnecessary evidence.
- Better management of the case could have resulted in a 30% cost saving of nearly £3,800.

Case management

3.23 Once a case is committed to the Crown Court, the application of the GFS generally results in increased level of cost the longer the case takes to finalise. It is important that the CPS has in place effective case progression systems, including timely review. By identifying and overcoming any unresolved issues that may act to prevent the speedy finalisation of cases (such as issues of disclosure, changing an indictment etc), savings will be made.

¹⁴ Two of the three criteria should apply before referral to the Head of Fees is made.

Worked example C

This example assumes that two defendants are charged with burglary. Unrepresented during the police interview, both defendants made no comment interviews. The suspects are clearly captured on CCTV, evidence which has been viewed by police and the charging lawyer. Despite several attempts to get a copy of the evidence from the CPS, the defence have not viewed the tapes. At the plea and case management hearing (PCMH) on 1 April the defence advocate advises their clients to plead not guilty until it is clear that the evidence the prosecution rely on actually exists. A trial date is set for 1 August and a few weeks beforehand the evidence is eventually served on the defence. On the trial date the defence advocate advises the defendants to plead guilty as a result of reviewing the CCTV evidence and the trial does not proceed (cracked trial).

GFS costs if defendants had pleaded guilty at the PCMH on 1 April	£607
GFS costs if the defendants plead guilty on the day of trial on 1 August (cracked trial)	£1,380

A lack of proactivity in the case has incurred an additional cost of £733 in GFS fees which represents an increase of 127% in costs over an early guilty plea at PCMH.

In both calculations the case assumes 800 pages of evidence, seven witnesses and presented by a junior.

Note: in one Area inspected 800 pages was the average page count for a burglary offence.

3.24 The circumstances in the above example are not unusual even though there is a significant financial incentive for the CPS to ensure cases are dealt expeditiously, (for example facilitating that guilty pleas are entered at the earliest available opportunity). A lack of proactivity works against the efficient disposal of Crown Court business and impacts adversely on court listing arrangements. Two of the Areas had introduced systems to identify cases which are likely to be guilty pleas or, based on the evidence, should be guilty pleas. The proactive follow up of dealing with any issues and encouraging the defence to tender an early guilty plea at the defendant's first appearance before the Crown Court had reduced costs.

3.25 3.9% of total potential savings in our file sample were as a result of unnecessary court hearings, late decisions to accept plea or late guilty pleas. This factor is likely to affect a significantly higher proportion of cases within the CPS than in our file sample because the proportion of such cases in our file sample was limited.

Case study 5

This case study illustrates that how proactive case management can keep costs to a minimum.

The defendant committed a very serious sexual assault and false imprisonment. He was sent straight to the Crown Court where the prosecutor undertook a thorough review and identified a number of actions that needed to be carried out. These were all addressed quickly by the investigating officer and as a result the prosecution were able to serve almost all their evidence at an early stage, including that relating to an extensive bad character application.

There were only three Crown Court hearings, the PCMH, the trial (the length of which had been estimated accurately) and shortly after the sentence hearing.

Because the prosecution had dealt with everything expeditiously there was no need to list the case for any mention or pre-trial review hearings.

An accurate record was kept of the evidence served and the hearing held.

The costs of the case were therefore kept to a minimum.

- In 70% of cases, paralegal staff had not agreed the page count with the advocate at court; in 60% of all cases the finance folder was not correctly endorsed in all relevant aspects and 32% of the information contained on the FIST did not match either the paper file or the CPS electronic case management system (CMS).
- The incorrect completion of the FIST by paralegal officers was sometimes a problem for the fees clerks. Discrepancies were seen between hearings or items of work recorded on the fees log or FIST and those seen on the file. Dates of hearing, records of tapes and conferences had been missed from the fees logs. The numbers of pages of evidence noted and the codes entered into the FISTs were often wrong and some FISTs had extensive crossings out. It was apparent that many amendments had been made by the fees clerks when checking the FISTs. Some endorsements were incomplete or pieces of paper were attached and some hearings not recorded.
- Some initial FISTs appear to have been completed by the fees clerks and then amended upon receipt of the GFC. This indicates that the record of work on the CPS file was not adequate for them to complete the FIST accurately.
- As a result of these inaccuracies, fees clerks had to 'piece together' what happened in the case in order to ensure the correct fees were paid. This involved checking CMS¹⁶ in respect of witnesses and hearing dates,

The payment process

3.26 The responsibility for dealing with fees claims rests with the Area fees clerk¹⁵, but their ability to identify errors in the claim, and to rectify them is hampered by administrative failures during the life of the case. Interviews with fees clerks and an examination of files exposed some fundamental weaknesses in the process of assessing the correct fees to be paid, including:

¹⁶ It was apparent that CMS was not always an effective tool for GFS purposes. Our file examination revealed that in most Areas there were hearing entries on the files that did not match those on CMS.

¹⁵ Chapter 5 describes the role of the fees clerk.

looking through the case file and checking endorsements, speaking to paralegal officers to check endorsements and details, and checking the Crown Court Xhibit IT system to try and establish what type of hearing occurred and who attended. Chambers were also contacted to establish what went on in the case.

- In too many circumstances paralegal officers relied on the fees clerks to amend and correct the documentation which they were responsible for completing contemporaneously and accurately. Whilst the efforts of fees clerks to correct errors or piece together what had occurred in the case were admirable, very few amendments were referred back to the paralegal officer or the paralegal business manager. This means that paralegal officers were not able to learn from mistakes made in the process, thereby exposing Areas to a greater risk of making overpayments.
- Overall, we found that the quality of initial FIST completion was poor. Items were often missing from fees logs or not recorded as having been sent to the advocate. This not only added delay to issuing the fee payments, but also highlighted the basic inefficiency inherent within the system.
- 76% of cases in our file sample showed a discrepancy between the claim submitted and the CPS file information. No record was maintained on the fees folder of any enquiry into determining (or resolving) what the correct claim should have been. Although this does not necessarily indicate that incorrect fees are being paid, it does reveal that accounting and monitoring procedures are weak.
- Most fees clerks interviewed knew of cases where other fees clerks had amended the FIST to match the claim from the advocate because it was more expedient to do so. We also found FISTs which had been amended in respect of page count to match the GFC but it was not possible to determine if this was as a result of expediency or careful reconciliation on behalf of the fees clerk. However, without an accurate record of how the eventual fees were agreed, those countersigning for payment of fees could not determine if they were correct without completing their own calculations. These findings add weight to interview evidence that fees were being countersigned without any purposeful checks being made. Too much reliance was placed on fees clerks by those whose responsibility it is to countersign that fees are correct¹⁷.

3.27 Fees clerks do not have any influence over the court process or what evidence is served. Their role is purely to ensure accurate payment of what is being claimed. They do not make any retrospective evaluation of whether evidence served, witnesses called or hearings attended etc were necessary. In addition, even if it is discovered that evidence which has been included in the page count should have been served as unused material, once it is served as evidence in the case, then the advocate is entitled to the fee. This emphasises the need for the lawyer and paralegal officer to ensure proper cost control in the case as mistakes cannot usually be rectified.

¹⁷ Chapter 5 makes a recommendation concerning better management of the fees system.

Case study 6

This case study demonstrates some of the technicalities involved in assessing the accuracy of fees. The case also illustrates how important it is to keep accurate records and endorsements on the file at each hearing, and in the absence of clear records, the need for the fees clerk to piece together what has happened in the case.

S&H were both charged with child cruelty. At the PCMH both defendants entered a plea of not guilty. The file note records that the case was then 'adjourned for further directions'. The finance folder endorsement states that the case was adjourned for trial. At the next hearing (the main hearing for the calculation of fees purposes), S entered a plea of guilty and the prosecution decided to offer no evidence against H.

The question with regard to what fees should be paid to the advocate, concerned whether the case was a cracked trial or guilty plea. For there to have been a cracked trial the PCMH must have been effective and a provisional trial date set. There were a number of factors to indicate that the PCMH was effective including the finance folder endorsement, that orders were made and that a witness list was prepared the day after the PCMH, however there is no record of any trial date being given.

Once the case was determined as a cracked trial it was then necessary to determine whether the cracked trial occurred in the 1st third or the 3rd third. For the trial to have been paid at the higher rate the start date is the date that the case is adjourned and a trial date given. In this case there was no evidence in the file to indicate the trial had been fixed at the PCMH which is unusual given the other orders that were made. In addition there is no evidence on the file that the trial date was fixed administratively¹⁸. The fees clerk in this case was unable to reconcile the correct facts and assumed the chambers invoice was correct.

However, in these circumstances the advocate should have been paid at the lower rate of cracked trial fee (the 1st third - £375) instead of the higher rate (the 3rd third £1,100) an overpayment of £725.

¹⁸ Some courts do not place a case in a trial list at the PCMH, but subsequently publish a list detailing the trial date of the case. In these circumstances the start date is the date the list was published.

Case study 7

This case study highlights that significant costs can be saved when fees clerks are robust and diligent in challenging erroneous claims. It also emphasises the importance of maintaining contemporaneous records of page count and notices of additional evidence on the case file in order to make it easier to identify and challenge erroneous claims from chambers.

This case deals with nine defendants involved in a conspiracy to supply Class A drugs over a three month period. The CCU handled the case. The police operation was lengthy and involved video, audio and mobile telephone evidence as well as evidence from undercover police officers.

The graduated fees claim submitted was for 13,500 pages of evidence but there is no audit trail on the case file for this amount of papers being served on the case file. The advocate prepared a handwritten record at court of the page count - countersigned by the defence advocate as being correct. The CCU fees clerk disputed the number of pages of evidence served. Part of the claim related to the preparation of prosecution schedules to assist the court, but there was no record of these schedules on the paper file. In any event, the preparation of written documents for use at the main hearing is already included within the base fee and is not generally allowable under the GFS unless special circumstances apply. Eventually, an agreement was reached at nearly half the original pages claimed. Without such a reduction, prosecution costs would have increased by £8,910.57.

Anomalies within the GFS system

3.28 Because the GFS operates in a mathematical/formulaic way it can, in certain circumstances, legitimately but perversely reward advocates for the work that is carried out on the case, see worked example D below.

3.29 In other circumstances fees paid would seem to represent reasonable value for money; for example, for a fee of £1,626, a junior advocate will prosecute a burglary case over a period of a five day trial involving one defendant, 250 pages of evidence and ten prosecution witnesses. This fee includes all the preparatory work leading up to the trial.

3.30 Case study 8 below is an example taken from our file sample where the GFS claim was in accordance with the scheme, but the application of GFS rules has given rise to an increase in the total prosecution costs, unrelated to any significant additional work required to prosecute the case¹⁹.

¹⁹ These amounts have not been included as potential savings as they are legitimate claims within the scheme.

Worked example D

The example below assumes that a defendant has been charged with being in possession of indecent photographs of children, and illustrates the situation (which is not uncommon) where advocates can earn more for a plea of guilty rather than a trial. The junior advocate will be paid £8,904 for a guilty plea (cracked trial in the 3rd third)²⁰ which is likely to be a full or half day at Crown Court, but is paid less, £7,636, for a full five day trial and a five day re-trial, a total of ten days in court.

This example also demonstrates the high fees that are payable (£2,893) when a defendant pleads guilty at the first Crown Court hearing even though the advocate would only need to outline the brief facts of the case with less preparatory work required for quite substantial reward.

	Plea of guilty in the 1st third	Plea of guilty in the 3rd third	5 day trial resulting in hung jury	5 day re-trial
GFS fees incurred	£2,893	£8,904	£4,601	£7,636*

The example assumes 2,000 pages of evidence, one defendant, and 30 witnesses, prosecuted by a junior.

* This figure includes the original trial of £4,601 and assumes the same advocate prosecuting within one month of the original trial.

²⁰ Whether a trial is 'cracked' in the 1st third (lower fees) or the 3rd third (higher fees) is determined by the start date, the end date and the main hearing date. The time between the start date and the end date are then divided into thirds and fees are calculated according to which third the end dates falls into. The calculation of these dates can often lead to confusion, particularly among paralegal officers.

Case study 8

In a multi-handed conspiracy to kidnap case, following a preliminary hearing and conference with the police and lawyer it was agreed no evidence would be offered on two of the six defendants which took place at PCMH. The advocate properly claimed £1,922.25 in fees. The subsequent trial cracked when pleas were offered by two of the remaining four defendants on the basis that the remaining two defendants were not proceeded against. The second main hearing included all the same material as the original bundle. Even so a further brief fee of £10,491 was payable.

Although these fees were properly claimed by the advocate, the case demonstrates that for little or no extra work on the part of advocate s/he is rewarded twice.

3.31 We understand that any system to remunerate advocates based on an easy to calculate, formulaic scheme will occasionally produce unintended results. The graduated fees scheme eliminates the need for lengthy negotiation on each case and cuts bureaucracy and in most cases is easily calculable. Every endeavour should be made to minimise any perverse outcomes whilst still paying the advocate fairly.

Priority recommendation

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

Impact of other agencies on prosecution costs

3.32 The CPS operates within the criminal justice system (CJS) alongside many other agencies including the police, the courts, and defence. Inevitably the practices or policies of one agency will have a bearing and influence on others within the CJS and the ability of the CPS to progress cases effectively will depend in part on the efficiency of partner agencies.

3.33 Some Areas stated that practices of CJS partners impacted on costs. Particular issues include the late receipt of trial files from the police, leaving less time for review, and therefore inviting cursory decisions on whether the material should form part of the prosecution case. Further cost implications, include the need for applications to extend and mention hearings. The provision of full transcripts, particularly of no comment interviews from the police, before they are strictly necessary and unnecessarily lengthy interview of defendants and vulnerable

witnesses on video all affect potential GFS costs. Police staff do not always indicate the length of tape, DVD or CD. This has led paralegal officers/GFS fees clerks not being able to check that the correct time had been claimed by the advocate. Time claimed by the advocate could not therefore be checked for accuracy, without physically reviewing and timing the evidence.

3.34 Two of the Areas inspected had started work with the police to try to rationalise the bundle of evidence. This included serving the statement of interpreters as unused evidence, reducing the lengthy introduction on ABE²¹ tapes, ensuring only necessary phone evidence was exhibited and a rationalisation of taped interview summaries, particularly where no comment interviews were involved.

Good practice

Areas working with partner agencies to ensure only appropriate evidence is served.

Other factors affecting costs

3.35 Other factors which affect fees payable to advocates under GFS include; case uplift, where the advocate receives additional fees if the defendant is indicted in a separate case, but heard at the same time; special preparation fees, where advocates are entitled to claim an additional fee in respect of work undertaken in relation to a very unusual or novel point of law or factual issue; and use of disclosure junior for viewing unused material. However,

²¹ ABE is a term that means 'Achieving Best Evidence' and usually refers to video taped interviews with children or vulnerable victims and witnesses. This interview practice necessitates the interviewer going through a structured preamble before any relevant evidence from the witness is obtained.

inspectors found that these factors had little or no significant impact in the cases examined in this inspection.

3.36 The number of witnesses in a case will also affect the cost of the case and whilst it is important to keep the number of witnesses to a minimum, our analysis and file examination indicated that the differential in the number of witnesses is not as critical to costs as other factor in GFS spend²². However unnecessary witnesses will inevitably mean unnecessary pages of evidence are also served, so costs can add up.

Potential savings within the CPS

3.37 It is important to emphasise that the 15.6% savings found in our file sample cannot, and should not, be aggregated into a representative amount that could be saved across the CPS nationally. Inspectors noted from the file sample that there were just too many variable factors for any broader extrapolation to be accurately calculable and that potential savings assessments could be made only on a case specific basis.

3.38 No account has been taken in respect of any potential savings that could be made in witness expenses, particularly expert witness fees, or travel expenses.

3.39 If the CPS could drive down just the top ten average GFS cost spending Areas to the average CPS spend²³, there would be potential savings of £12,365,965. Alternatively, a similar amount could be saved if the CPS were able to find potential saving of 10% from all the CPS Areas. Clearly, however, it is imperative to drive down costs in those Areas where a lack of control over fee spend is evident, whilst recognising that savings can also be made in Areas with better controls.

Potential savings for the rest of the criminal justice system

3.40 Action taken by the CPS to achieve the financial savings identified in this report have the potential also to assist the control of costs elsewhere in the CJS, in particular in respect of defence fees, and through a reduction in unnecessary court hearings.

Priority recommendation

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.

²³ Based on the 2009-10 spend. A full explanation of average GFS spend is given at paragraph 4.14.

²² In less than 4% of cases witness numbers were inappropriate which indicates that, overall, the number of witnesses identified as necessary to prove the case was being accurately accounted for.



4 Governance of the graduated fees scheme at national level

4.1 Governance of the GFS can be broadly separated into two limbs. The first is at national level (CPS headquarters) where policy is set regarding guidance, negotiation of fees, audit control, advice and training. And secondly at a local level through Groups and Areas who administer the scheme, allocate cases and pay fees (see chapter 5).

The role of the Court Business Unit

4.2 The CBU is a relatively small CPS headquarters unit that provides a focal point for all queries in relation to the GFS. The CBU is responsible for: providing an audit control regarding the GFS for all Areas; collating information supplied by Areas and providing analysis and performance reports; updating the manual of guidance and internet forum; providing training, advice and liaison; and allocating individual auditors to VHCCs. An overview of each of these functions is provided below.

Auditing of Areas

4.3 Five formal in depth Area audits are carried out by the CBU each year. In addition, the CBU conduct a one day prosecution costs health check for all other Areas. The inspection team were provided with 31 health check reports and five full audit reports covering the period 2009-10.

4.4 The health checks completed by the CBU auditors consisted of an examination of approximately 20 Crown Court cases for each Area along with the finance folder (which contained the FIST and GFC). Interviews with the paralegal manager and fees clerk, or other relevant staff, also informed the process. The full audit reports were a little more thorough although the detail in these reports appeared

no more comprehensive than the one day health checks. The main recommendations from all 36 reports were broadly aligned to most of the process related findings in our inspection²⁴.

4.5 The audit process provides indicators of where improvements need to be made and highlights good practice. This informs local Area management and CPS headquarters of the general weaknesses and strengths in the system and where more advice, information and local training is required. The combined results of these audits then focus national training on the information that needs to be given to Areas, and informs the process which leads to amendments to the best practice document and the manual of guidance.

4.6 However, the focus of audits is mainly based on whether the system has been adhered to and fees correctly calculated. Auditors do not examine decisions made about casework and/or the direction of the case. It is apparent from HMCPSI's examination of case files that approximately 75% of the total potential savings found would have unlikely been detected by auditors performing a regular audit of the 162 cases examined²⁵. However, it is clear from the combined findings of the CBU audits and HMCPSI's own findings that much more emphasises is required for robust intervention and monitoring by Area management, including lawyer input, in order to ensure the GFS and associated systems and processes are providing value for money.

²⁴ Annex G outlines the details of the CBU's recommendations.

²⁵ The figure of 75% excludes any pages that auditors established should not have been served, although these would have been confined to mainly non-legal issues.

Performance and analysis

4.7 The CBU is responsible for the central collation and analysis of data in relation to GFS, VHCC and other prosecution cost spend. The CBU often only becomes aware of expenditure after the event when monthly management reports are published, it is therefore incumbent on each individual Area to be aware of their costs and ensure they have an accurate accrual system in place.

4.8 The CBU is capable of producing a variety of data including: GFS spend and advocate fees savings; Crown Court finalisations and unit costs; GFS spend by case type, effective trials, cracked trials, guilty pleas; average page count by case type, offence group and trial length, and spend on multi-advocate cases. The CBU can reproduce this data in a variety of ways and the system used appears very flexible in obtaining streams of information according to what is required. This information is not readily available for Areas to access but would be useful tool for Areas or Groups conducting analysis or in depth examination of how their GFS costs are used.

4.9 The CBU examines the reasons behind the authorisation of all multi-advocate cases and will ask the Area/unit to account for the need for more than one advocate when it is not clear to the CBU that appropriate guidelines have been followed. Whilst this is a retrospective review, it does provide a more strategic overview of trends in respect of multi-advocate cases and demonstrates to those authorising these cases that their decisions are being quality controlled.

4.10 Area performance is disseminated and usually incorporated into Area performance information. Information includes: average cost per case; a summary of prosecution cost position; multi-advocate cases; and information on how often chambers and individual advocates are used in terms of cases and overall monetary value. Whilst this information is useful, Areas and Groups should make themselves aware of the streams of information available through the CBU which may assist them in undertaking better analysis and thus reduce costs and enhance systems.

CPS guidance, advice and training on the GFS

4.11 The CPS has a GFS manual, provides updates and guidance on the more common queries about payments which addresses many of the factors which contribute to unnecessary higher fees. All these documents are relevant and add value to understanding the scheme and how to control costs. The CBU also maintains a fees forum or bulletin board on the infonet which is used by staff to post queries about aspects of fees they are finding difficult to resolve.

4.12 Each Area has an allocated auditor from the CBU who liaises with and offers advice on fees when needed. All Areas visited praised their knowledge and experience and all were able to give examples of how auditors had helped them clarify matters.

4.13 Staff from the CBU run a two day GFS training course which was attended by all the fees clerks in the selected Areas. All stated that the training was good, although the real experience and knowledge came with actually doing the job. It is also encouraging to note that some fees clerks from chambers also had

the opportunity of attending the GFS course. The CBU auditors also conduct ad hoc training when invited to do so by Areas and in order to ease demand of the CBU, certain Areas had GFS champions who provided refresher training and personal training for long serving staff or those needing help understanding the scheme. It is clear that whilst the training provided is essential, local practices and poor quality control over processes has diluted its impact.

Good practice

The experience and advice offered by the CBU.

Relationship between the average GFS costs and potential for GFS savings

4.14 The CBU also produces data in respect of the average GFS cost per case for each Area. The average cost is determined by the number of finalisations in the Crown Court divided by the total GFS spend and is normally calculated over a 12 month period²⁶. It excludes VHCCs.

4.15 Annex D provides an overview of the average cost per Crown Court finalisation for 2009-10. There are significant variations between Areas with average costs varying between £483 and £1,437. The average cost per case nationally was £886. Although the differential in average spend reduced over a three year period, there still remained significant differences between averages which varied between £580 and £1,262. In addition, our analysis of GFS spend over a three year period also revealed that there were Areas that were consistently in the top quartile and bottom quartile of average GFS spend per case.

4.16 We expected to see better practices and fewer opportunities to save fees from those with a lower average GFS spend. The table below shows the six Areas we inspected. Areas A, B and C were the three Areas in the top quartile of average spend and Areas D, E and F were within the lowest average spend quartile. The average spend in the CPS over the three year period, 2007-10, was £815.

²⁶ In determining the average GFS cost, the CPS include the costs 'saved' by crown advocates.

Area	Average GFS spend per case over three years	GFS spend in files examined	Potential savings found	Savings found as a percentage of GFS spend	Grouped % savings
A	£1,262	£416,781	£97,179	23.3%	18.2%
B	£1,061	£277,407	£53,588	19.3%	
C	£1,040	£240,841	£20,032	8.3%	
D	£643	£85,409	£7,110	8.3%	8.7%
E	£617	£107,122	£12,518	11.7%	
F	£580	£173,099	£12,142	7.0%	

4.17 There appears to be a clear correlation between Areas A and B, as having the highest average GFS spend, with much higher percentage of opportunity to make savings. Similarly there were fewer opportunities to make potential savings in Areas D and F which corresponded to their low average GFS spend per case. The only anomaly was Area C which had less potential savings than Area E even though their average GFS spend was almost double that of Area E. Overall however, there was a stark contrast between the three Areas grouped in the top spending quartile (18.2% potential GFS savings) and the three Areas in the lowest spending quartile (8.7%).

4.18 Our inspection identified that there were too many variable factors that influence the average cost in order to recommend a reliable template that could apply to all Areas so that they could control or reduce GFS spend. In general, if an Area followed tight controls to ensure they were achieving best value for money over costs coupled with a high early guilty plea rate and low contest rate, then average costs should be lower but this is not always the case. For example, some Areas cited they dealt with more costly categories of crime (ie sex crime and fraud) than surrounding Areas which increased their average cost per case. Other Areas where they had a high number of low cost 'run of the mill' cases being finalised at the Crown Court, produced the effect of reducing the average cost per case (high volume but low cost) but did not necessarily mean they exercised better controls over fees.

4.19 While some external factors affected GFS costs, it is clear that the impact of external agencies has a relatively minor impact on GFS spend overall. Regional and local cultural practices should not affect the average spend to any significant degree, although there may be exceptions.

4.20 Whilst the examination of six Areas cannot provide conclusive evidence, there is a compelling argument, based on our findings, to suggest that those Areas with a higher average spend have more opportunities to make savings and therefore need to introduce tighter control over GFS spend. It is also important to note that Areas with low average costs and better controls can still save significantly on GFS spend. However the issue is not a simple one and many complex factors complicate establishing clear reasons for the differences.

4.21 There is a need to understand how all these factors contribute to the average cost of GFS spend. This is particularly important in Groups where Areas within the Group have a high differential in average prosecution cost. It is also necessary to ensure that any analysis is conducted over a two to three year period to avoid legitimate short term anomalies. It remains essential therefore, to drive down the average cost per case and in so doing reduce the differential between averages across the CPS.

Priority recommendation

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.

5 Management and delivery of the graduated fees scheme at Group and Area level

Group control over GFS spend

5.1 Groups examined in this inspection were only just getting to grips with prosecution costs. The prosecution costs budget is handled by the Group operations centre (GOC) and distributed to each Area appropriately. Whilst most Groups completed the month on month costs for each Area for accrual purposes, deeper analysis of issues affecting costs were weak, although most Groups were beginning to understand the importance of controlling GFS and had various measures they intended to introduce.

5.2 It is important for Groups to ensure that they have a firm understanding of how GFS costs operate on each Area and disseminate good practice. We make a recommendation at paragraph 3.19 for records of multi-advocate applications to be analysed and at paragraph 4.21 for Groups to analyse the difference of average GFS costs within their Group where they appear disproportionate.

GFS cases handled by the CCU

5.3 The majority of advocates in CCU cases are paid under the GFS. In most cases, when a case is referred from an Area to the CCU, which is a Group based unit, the GFS fees incurred are then referred back to the originating Area for payment when the case is finalised. This allows a risk of a lack of accountability and budgetary control by the CCUs and weakens the control and decision-making authority at Area level. Combined with weak budgetary reporting by some CCUs means that Areas find it hard to forecast effectively. In one CCU case, which had been referred directly by police to the CCU, the Area was presented with costs of £59,000 without any prior notification.

5.4 Some Areas and Groups in the inspection recognise these problems and are putting in systems to resolve them²⁷.

Recommendation

Groups should ensure a more robust system of reporting current and projected expenditure by CCUs.

Area control over GFS spend

5.5 Only one Area inspected had a dedicated prosecution cost performance group which looked at all aspects of GFS and prosecution spend and another had an action plan to reduce its average spend and this was monitored regularly. All other Areas included GFS costs within their general performance meeting. Some Areas did not discuss GFS performance at all or discussed it only in general finance meetings.

5.6 Areas are beginning to understand how GFS can provide actual savings to the overall budget if managed properly. Two of the Areas visited had tried to understand the relationship of average GFS cost and why it differed from their neighbour Areas but had not come to any useful conclusions.

5.7 It was clear from the many interviews conducted, that an ingrained aspect of CPS culture was the notion that prosecution/GFS costs had to be paid and that they had little control over them. Historically, most control was focussed on forecasting and accruals and

²⁷ In January 2011 the CPS announced a change to its national structure from 42 Areas into 13 Areas, which came into effect on 1 April 2011. It is anticipated that this new structure will exercise more control over the CCUs.

understanding what would be the final budget for prosecution costs, rather than trying to reduce costs at source. Most Areas are now aware of a step change approach, led by the CPS Management Board, in seeking value for money from all CPS activity including the GFS, and reducing prosecution costs is now a key priority for the CPS. However, performance regimes and understanding of how costs can be influenced remain weak.

5.8 One Area had introduced a newsletter about Area fees which was informative, provided statistical information, amendments to the scheme, helpful reminders and worked examples of fees.

Good practice

Area fees newsletter providing up to date information on fees.

Roles and responsibilities

The fees clerk

5.9 The roles and responsibilities of GFS clerks²⁸ varied in all of the Areas visited, some were part-time but dedicated to the fees role only, whereas some were full-time but had other responsibilities including the allocation of work to crown advocates. Some Areas and Groups were considering centralising the role of fees in order to give some resilience to the role and reduce costs.

5.10 The role of the GFS fees clerk is to ensure prompt and accurate payment of fees to the advocate. Whilst the calculation of fees is a formulaic one and calculated automatically on an IT system, a minority of fees can be complex to calculate properly and require an interpretation of actions taken at different hearings.

5.11 In simple terms, most fees clerks take information from the FIST, check what fee should be paid in the case and then match it with the GFC submitted by chambers on behalf of the advocate. If it matches, it is signed and sent for payment. If the claim does not match, the fees clerk will enter into a dialogue with chambers to establish where the differences lie. Where there were differences, most were quickly resolved. However their ability to identify errors in the claim, and to rectify them is hampered by administrative failures during the life of the case²⁹.

5.12 In all Areas inspected, with very few exceptions, fees clerks had a very good working relationship with chambers. The numbers of chambers used by an Area varied from three to over ten sets of chambers. In each case however, it was evident that clerks had managed to communicate well with chambers and resolve nearly all disputes without escalating them to senior management. Many chambers often spoke to fees clerks for advice and some clerks from chambers had received their training on fees through the CPS GFS course. Most communication with chambers was over the phone or by letter. Increasingly, claims and communication were being conducted by email. Only one Area conducted all communication and correspondence by letter.

²⁸ The role of the GFS fees clerk is a non-lawyer role.

²⁹ See paragraph 3.27.

5.13 Fees clerks take seriously their responsibility for identifying and resolving inaccurate claims. They saw it as their job to save the CPS money by acting as gatekeepers and would ‘knock back’ or dispute claims which appeared to be inaccurate. Although none of the fees clerks kept an account of how much they had saved³⁰, some claimed to have saved a few hundred pounds, whilst others believed they saved tens of thousands of pounds a year. All fees clerks believed that any over-claiming by chambers was a misinterpretation of the GFS or simple error. Despite the importance of the fees clerks’ role in realising savings, the inspection team found that 6.3% of the potential saving identified during the inspection was due to inappropriate fees claims which were not being corrected or challenged.

5.14 Partly due to the specialist nature of their role, very few clerks had any monitoring or checking of their work by Area management. There was a lack of clarity about the levels and purpose of allocated financial delegation. Most clerks were signing off payments above the policy limit of £1,000 and some were signing off payments of £10,000. In some Areas only paralegal officers could sign above certain limits. However we found an increasing practice of fees clerks requesting paralegal officers to sign off claims even though they may not have been involved with the case and did not have the means or the time to check the validity of the fees. Most would therefore sign off the fees based on the trust they had in the fees clerk.

5.15 Some clerks were concerned that without a well managed and regular monitoring system in place and lack of compliance with a robust dual signatory control that complacency could set in or the system could be exposed to the risk of endorsing improper or inaccurate payments. During our inspection it was brought to our attention that a large volume of fees in one Area of the CPS had not been paid for over a year, which highlights the need for regular management intervention.

5.16 In addition, most fees clerks had relatively little or no cover for annual leave or sickness periods, leading to a situation where work builds up for them and will be waiting for them on their return. The role of GFS fees clerks has become somewhat specialised and in some cases fees clerks feel isolated from other CPS staff. Management should be aware of the circumstances that affect their particular Area and build in supporting mechanisms where necessary.

Recommendation

There should be regular management checks and dip sampling of fee payments. Feedback to fees clerks should be provided.

Recommendation

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.

³⁰ Savings in this context means only paying the accurate fee rather than fees originally claimed via chambers.

Role of CPS lawyers

5.17 It is clear from the case studies highlighted in this report that CPS lawyers have a significant role to play in ensuring prosecution costs are kept under control. They determine the charge(s), material that should be served and which direction the prosecution should take. Cases should be reviewed regularly throughout the life of the case and action taken at the earliest opportunity to bring it to a conclusion, provided justice is served. All this should be done with a view to the likely costs of pursuing a particular course of action.

5.18 The inspection found that nearly all lawyers, including crown advocates, interviewed were completely unaware of how GFS costs were calculated and the cost implications of prosecuting a case. They lacked any knowledge of how much a hearing cost, what costs were involved in respect of page counts or that costs differed in respect of case type, type of hearing and grade of advocate prosecuting.

5.19 It is clear from our file examination that the majority of potential savings found could have been influenced by CPS lawyers, which makes their understanding of costs and how these can be controlled imperative.

Role of paralegal officers

5.20 The roles, responsibilities and management of paralegal officers varied widely. However with regard to the GFS, their responsibilities include; ensuring that the FIST and fees folder is accurately and contemporaneously completed, ensuring that the advocate countersigns the page and witness count on the case file and examining any notices of further evidence served at court are necessary.

5.21 In the inspection file sample, all too often FISTS and the fees folder were incomplete or not even attached to the case file and endorsements were missing. There was generally a lack of management control or intervention with regard to accounting processes and ensuring value for money around fees, although one Area had introduced specific objectives into paralegal officers' performance assessments.

5.22 In 2007-08, CPS accounts were audited by the National Audit Office (NAO) and, as part of their work, a number of advocate fee payments were audited. The NAO also found that there were a number of files where no finance folder existed on the case file, and if the folder was attached, many were incomplete and not properly endorsed.

5.23 All paralegal officers interviewed had either been trained on a two day GFS course or had awareness training. In addition some had refresher training arranged by their Area. Despite this, few believed that they had much influence over GFS costs and no examples or good practice were evident from any of the focus groups interviewed. Some stated that they tried to persuade lawyers that there was no need to put so much into the bundle of evidence and some tried to reduce the number of photographs included but ultimately they felt that this was out of their control. Some paralegals felt they had some control over notice of additional evidence (NAEs) at court whereas some indicated that they were just served and added to the page count without checking.

5.24 Changes to the administrative arrangements in the way Crown Court cases are handled in CPS Areas has meant a move away from case ownership by paralegal officers, with just the serious and complex cases allocated to named paralegal staff. This presents difficulties with regard to responsibilities for GFS fees. Two Areas gave fees ownership in each case to a named paralegal officer irrespective of whether they went to court with the case. This proved more effective in ensuring the fees folder and FIST was up to date and gave the fees clerk a point of contact if difficulties occurred.

5.25 Nonetheless, it is disappointing that despite the findings by the NAO and the recommendations made in audits by the CBU³¹, the inspection discovered such poor compliance still exists. Without proper accounting records, it exposes the CPS to risk of making inaccurate payment. Area business managers can only be sure that accounting procedures are being followed if there are routine management checks as part of the overall process.

Good practice

Ownership of cases for fees purposes by paralegal officers.

Recommendation

There should be regular management checks of paralegal completion of the finance folder and the FIST.

Allocation of cases to chambers

5.26 Cases should be allocated to an appropriate advocate, taking into account the complexity and sensitivity of the case and the experience and expertise of the advocate³². Assessing the complexity and the weight of the case requires judgement on the part of either the lawyer in the case and/or an experienced paralegal officer.

5.27 Various practices were adopted by Areas regarding the allocation of briefs to external advocates. In some Areas all the briefs were channelled through one single person who would allocate briefs to both in-house and external advocates. Other Areas had ad hoc systems and where a case was more complex or sensitive it tended to be allocated by the paralegal officer and/or the lawyer involved in the case or unit head.

5.28 The rationale for the selection of advocates was made mainly on previous dealings with that advocate. In addition to experience, expertise and success rate, other factors were taken into account when selecting the correct advocate including how well the advocate would treat witnesses and victims, how communicative s/he was and how quickly s/he was likely to be in answering queries. Both paralegal officers and lawyers believed that their experience of selecting the correct lawyer for the case was paramount to a successful outcome but that it also provided value for money to the CPS because they knew they were choosing someone that would not waste time and who was reliable.

³¹ See chapter 4.

³² In most of the country self-employed advocates are given a grading by a Joint Advocate Selection Committee made up of members of the Bar and the CPS. This grading is taken into account along with other measures when selecting the most appropriate advocate.

5.29 Our file examination revealed that in a majority of cases there were no reasons recorded why particular chambers or advocates had been appointed and in one particular serious case, the advocate was specifically, but inappropriately chosen to handle the case³³.

5.30 The allocation of advocates is monitored by the CBU. The CBU produces performance information which includes the number of times chambers as well as individual advocates are instructed, and includes a financial breakdown of fees paid. This information is made available to Area although there was no evidence that it was analysed or use was made of the information.

³³ The CPS propose to introduce a select panel of prosecution advocates from the self-employed Bar. The net effect would be to decrease the existing pool of advocates but increase its expertise.

Timeliness of payments

5.31 It is proper and beneficial for the CPS to make timely payments to allow accurate budget planning. Nationally, for the year 2009-10, close to 55% of advocate fees spend was made within one month of the case concluding and 93% of spend within about four months of the case concluding.

5.32 All six Areas visited have adequate or good systems in place to ensure that timely claims for payment were received and unpaid fees are identified. Some Areas updated chambers in writing or emailed them every week or so with a list of outstanding claims and this update included a 'last chance warning'³⁴ to send in the claim. Good liaison with chambers over the telephone also helped to ensure payments were made promptly. Timeliness was nevertheless hampered by poor file management and the inaccurate completion of the initial FIST to authorise payment.

³⁴ As part of an agreement with chambers, they have to send in their claim within three months or forfeit their claim. None of the Areas visited had encountered any recent problems.

A Glossary

Achieving best evidence

Good practice in interviewing witnesses in order to enable them to give their best evidence in criminal proceedings.

Area business manager (ABM)

Senior business manager responsible for finance, personnel, business planning and other operational matters.

Chief crown prosecutor (CCP)

One of 42 chief officers heading the local CPS in each Area; is a barrister or solicitor, has a degree of autonomy but is accountable to the Director of Public Prosecutions (DPP) for the performance of the Area.

Code for Crown Prosecutors (the Code)

The public document that sets out the framework for prosecution decision-making. Crown prosecutors have delegated to them the DPP's power to determine cases, but must exercise the power in accordance with the Code and its two tests – *evidential* and public interest. Cases should only proceed if, firstly, there is sufficient evidence to provide a realistic prospect of conviction and, secondly, if the prosecution is required in the public interest.

CPS case management system (CMS)

Computerised system for case tracking and management used by the CPS (also known as Compass).

Crown advocate

Crown advocates, previously known as higher courts advocates (HCAs), are the in-house CPS lawyers who are entitled by professional qualification and CPS designation to appear in the Crown Court.

Crown advocate savings

Crown advocates handle some cases which external advocates used to do, their work in the Crown Court is calculated as 'savings' which have been made by the CPS. The savings are calculated in exactly the same way through the GFS calculator and amount to the same as an external advocate would have charged the CPS.

Crown Court

The Crown Court is based at 77 centres across England and Wales. It deals with the more serious criminal cases and appeals from the magistrates' courts.

Discontinued and dropped cases

The dropping of a case by the CPS in the magistrates' courts or Crown Court without any evidence being called whether by written notice, withdrawal or offering of no evidence at court.

Evidential test

The first limb of the test under the *Code* that a prosecutor must be satisfied with – is there sufficient evidence to provide a realistic prospect of conviction on the evidence?

Full Code test

The full Code test has two stages. The first is consideration of the evidence (*evidential test*). If the case does not pass the evidential stage it must not go ahead no matter how important or serious it may be. If it passes the evidential stage, crown prosecutors must proceed to the second stage and decide if a prosecution is needed in the public interest (public interest test).

Good practice

An aspect of performance upon which the inspectorate not only comments favourably, but considers reflects a manner of handling work developed by an Area which, with appropriate adaptations to local needs, might warrant being commended as national practice.

Graduated fee claim (GFC)

The GFC is an invoice raised by chambers for the amount of fees incurred by advocates instructed in the case. It is sent to the CPS for payment at the conclusion of the case.

Graduated fees scheme (GFS)

The system by which external advocates are paid for representing the CPS in cases in the Crown Court.

Infonet

An internal website used by the CPS.

Legal Services Commission

Runs the Legal Aid scheme in England and Wales and remunerates solicitors and assigned advocates for work done under the scheme.

Magistrates' courts

Virtually all criminal cases start in the magistrates' courts and 95% are dealt with entirely there. The defendant facing more serious charges may be sent or committed to the Crown Court on the direction of the court or because the defendant elects Crown Court trial (in either way cases). If a defendant appeals against a decision of the magistrates' court, this will be heard in the Crown Court. Decisions are made either by a district judge or a bench of lay magistrates.

Plea and case management hearing (PCMH)

A PCMH takes place in every Crown Court case and is often the first hearing in that court after committal or sending in indictable only cases. Its purpose is twofold: to take a plea from the defendant and to ensure that all necessary steps have been taken in preparation for trial or sentence and that sufficient information has been provided for a trial date or sentencing hearing to be arranged.

Recommendation

This is normally directed towards an individual or body and sets out steps necessary to address a significant weakness relevant to an important aspect of performance (ie an aspect for improvement) that, in the view of the inspectorate, should attract the highest priority.

Very high cost cases (VHCCs)

Any case committed, sent or transferred to the Crown Court in which the trial is estimated to last more than 40 days or in which three trial advocates are instructed in the preparation and presentation of the case.

Xhibit

An IT system in the Crown Court. It includes electronic notice boards which can be updated by court clerks to display the progress of each trial that is underway, as it happens.

B Inspection methodology

We selected six Areas to be inspected based on the frequencies with which they appear in the top and bottom quartiles of GFS average spend over a period of three years. Three Areas from the upper quartile and three Areas from the bottom quartile were chosen. Other factors also influenced the selection including recent trends and Group activities and recent or proposed inspection.

From the Areas selected we examined 162 case files to evaluate how GFS fees are affected by the quality and timeliness of casework decisions, and the correct utilisation of the GFS. The file sample comprised of a core sample that included multi-defendant cases, cases involving vulnerable witnesses, those involving allegations of the possession of drugs with intent to supply and those where the CPS instructed multiple advocates. Approximately half the file sample was bespoke to the particular Area visited, based on analysis of GFS use and certain trends in the Area concerned. All cases selected were further divided into late guilty pleas, judge ordered acquittals, and trials. As this purposely concentrated on particular types of classifications, the mix of cases included in the sample was deliberately not representative of a typical CPS Area's caseload or outcomes.

We conducted staff interviews with those responsible for processing and managing prosecution costs. These included lawyers, paralegal officers, business managers at Group and Area level, fees clerks, trainers, headquarters staff and auditors. In total, over 70 CPS staff were interviewed.

We examined the operating systems and performance regimes employed by Groups and Areas.

There were several factors that were outside the scope of our inspection. These were: an examination of very high cost cases; advocacy observations; the management and effective use of CPS crown advocates and how their savings affected the average GFS costs; the process of negotiation regarding fees with the Bar Council; and other prosecution costs such as expert fees, witness and interpreters' costs. To have inspected these issues would have made the scope of the inspection too broad. In addition we did not include whether external advocates give value for money in respect of their work, although we do comment in cases where GFS has legitimately provided additional remuneration and reward, not fully justified in terms of value for money.

We also make comment about issues which may not strictly be concerned with potential GFS savings but nonetheless are important to the overall process.

How we calculated potential savings

Inspectors assessed each case in terms of decision-making, casework, record keeping and payment processes. Where a potential saving was identified, this was linked to the activity, or activities, most closely associated with its occurrence. It should be noted that these are only potential savings. This is because it is impossible to predict events in the criminal courts with complete certainty; hence, it is not an inescapable conclusion that a late guilty plea would have been entered earlier (thereby reducing costs), had the prosecution case been properly prepared in a timely fashion.

Given the above, therefore, and in order to place the report findings in proper context, it is right to set out the general approach taken by inspectors when determining the level of potential savings. Although the outcome was known in each file examined, inspectors specifically disregarded the benefit of such hindsight and determined only what would have been reasonable and known at the relevant time an activity took place. The approach was, therefore, a relatively conservative one and not predicated upon producing a 'perfect' case. At all times, inspectors endeavoured to be realistic in determining potential savings and erred on the side of caution where there was doubt.

In applying this, however, certain assumptions were made. For any case which ought not to have been prosecuted at all, the whole of the GFS costs were calculated as a potential saving. For any case which ought not to have been prosecuted in the Crown Court, the whole of the GFS costs were calculated as a potential saving on the basis that it would have dealt with by an in-house prosecutor in the magistrates' court. Where it was reasonable to determine that, but for the prosecution's actions (or lack of them), it was highly likely for the case to have concluded at a reduced cost, then the assessed amount was included as a potential saving in that case. Where waste was identified, but depended upon a number of variable factors, outside the control of the CPS, then it was not included as a potential saving.

The potential savings were calculated in monetary terms by using the standard GFS multipliers set out in the scheme and the percentage of potential saving represents that figure, set against the full amount paid out to the self-employed advocate, net of any crown advocate involvement in the case. Potential savings did not incorporate other prosecution costs, such as the use and payment of experts, witness expenses, foreign travel, etc.

C CPS prosecution costs expenditure summary

The table below summarises the expenditure position over the last five years.

	2005-06	2006-07	2007-08	2008-09	2009-10
External expenditure	£164,711,442	£163,855,703	£160,327,392	£150,298,673	£150,610,331
Change on previous year		-£855,739	-£3,528,311	-£10,028,719	£311,658
% change on previous year		-0.5%	-2.2%	-6.3%	0.2%
Crown advocate flexible funding provision	£3,348,600	£7,265,900	£13,961,100	£19,603,300	£24,029,500
Change on previous year		£3,917,300	£6,695,200	£5,642,200	£4,426,200
% change on previous year		117.0%	92.1%	40.4%	22.6%
External expenditure + crown advocate flexible funding	£168,060,042	£171,121,603	£174,288,492	£169,901,973	£174,639,831
Change on previous year		£3,061,561	£3,166,889	-£4,386,519	£4,737,858
% change on previous year		1.8%	1.9%	-2.5%	2.8%
Crown Court finalisations	124,640	123,452	131,365	139,194	143,196
Change on previous year		-1,188	7,913	7,829	4,002
% change on previous year		-1.0%	6.4%	6.0%	2.9%
Average prosecution costs	£1,348	£1,386	£1,327	£1,221	£1,220

35 Table produced by the CPS and includes very high cost cases, witness cost and other prosecution cost expenditure.

D Average graduated fees scheme spend per Area

Area	Crown Court GFS spend 2009-10	Crown Court caseload	Average GFS spend
Surrey	£2,140,638	1,490	£1,437
London	£33,551,632	27,578	£1,217
Gwent	£1,375,604	1,175	£1,171
Wiltshire	£916,151	902	£1,016
Merseyside	£4,248,687	4,214	£1,008
Cambridgeshire	£1,740,860	1,739	£1,001
West Yorkshire	£6,657,936	6,667	£999
Suffolk	£1,122,215	1,131	£992
Hampshire and the Isle of Wight	£3,957,670	4,076	£971
Dyfed Powys	£683,436	722	£947
Hertfordshire	£2,198,016	2,358	£932
Kent	£3,406,391	3,705	£919
Dorset	£1,249,789	1,395	£896
National	£126,886,601	143,196	£886
South Yorkshire	£3,545,486	4,093	£866
Sussex	£3,082,265	3,571	£863
West Midlands	£7,300,081	8,461	£863
Essex	£3,267,665	3,813	£857
West Mercia	£1,919,640	2,253	£852
Devon and Cornwall	£2,196,550	2,591	£848
Warwickshire	£518,145	617	£840
Thames Valley	£3,397,291	4,061	£837
Gloucestershire	£769,939	925	£832
Bedfordshire	£1,154,688	1,400	£825
Cumbria	£1,188,550	1,466	£811
Derbyshire	£1,552,953	2,101	£739
Lancashire	£3,420,109	4,713	£726
Greater Manchester	£6,852,520	9,599	£714
Staffordshire	£1,763,497	2,496	£707
Lincolnshire	£794,469	1,131	£702
Leicestershire	£1,536,491	2,197	£699
Nottinghamshire	£2,112,513	3,037	£696
Norfolk	£1,269,009	1,827	£695
Avon and Somerset	£2,059,904	3,013	£684
Durham	£1,312,227	1,953	£672
Northumbria	£2,750,600	4,227	£651
Cleveland	£1,373,250	2,156	£637
North Yorkshire	£1,022,911	1,611	£635
South Wales	£2,857,162	4,604	£621
Cheshire	£1,333,114	2,182	£611
Humberside	£1,695,750	2,865	£592
North Wales	£867,446	1,584	£548
Northamptonshire	£723,351	1,497	£483

E HMCPSI framework for the value for money inspection relating to the graduated fees scheme

1 Clear and effective governance, in relation to the graduated fees scheme, is demonstrated at national level

- The importance of managing GFS is disseminated effectively from headquarters.
- Headquarters provides helpful timely guidance on the application of the scheme and is effective in disseminating good practice.
- There are appropriate national controls to minimise the financial risk of the scheme.
- Headquarters provides high quality and timely management information on GFS to Areas and Groups.
- There is effective training on the scheme.

2 Management at Group and Area level demonstrate clear governance and control measures, in relation to the graduated fees scheme

- Areas have effective systems for the selection of advocates in order to deliver successful outcomes and value for money.
- Relevant and reliable data and information in relation to GFS costs is analysed effectively to enable decision-making, control of expenditure and management of performance at Group and Area level.
- Managers demonstrate value for money through the effective use of the scheme.
- Central GFS guidance advice and best practice is adhered to.
- The Areas/Groups are proactive in working with partners to minimise GFS expenditure.
- Managers identify, control and manage risks and maintain a sound system of internal financial control.

- Staff comply with financial delegation limits.
- Appropriate and sufficient staff have been trained and possess the correct skills to ensure proprietary of the scheme and ensure value for money is being achieved.

3 There are systems, processes and measures to ensure effective delivery and monitoring of the graduated fees scheme

- Staff understand the key drivers of GFS costs.
- Groups/Areas have systems to enable accurate forecasting of prosecution costs.
- GFS fees are calculated accurately in accordance with the rules of the scheme.
- The selection of advocates is appropriate and guided by value for money principles.
- Financial folders are an accurate representation of what happened in the case.
- Fees are paid accurately in a timely manner.

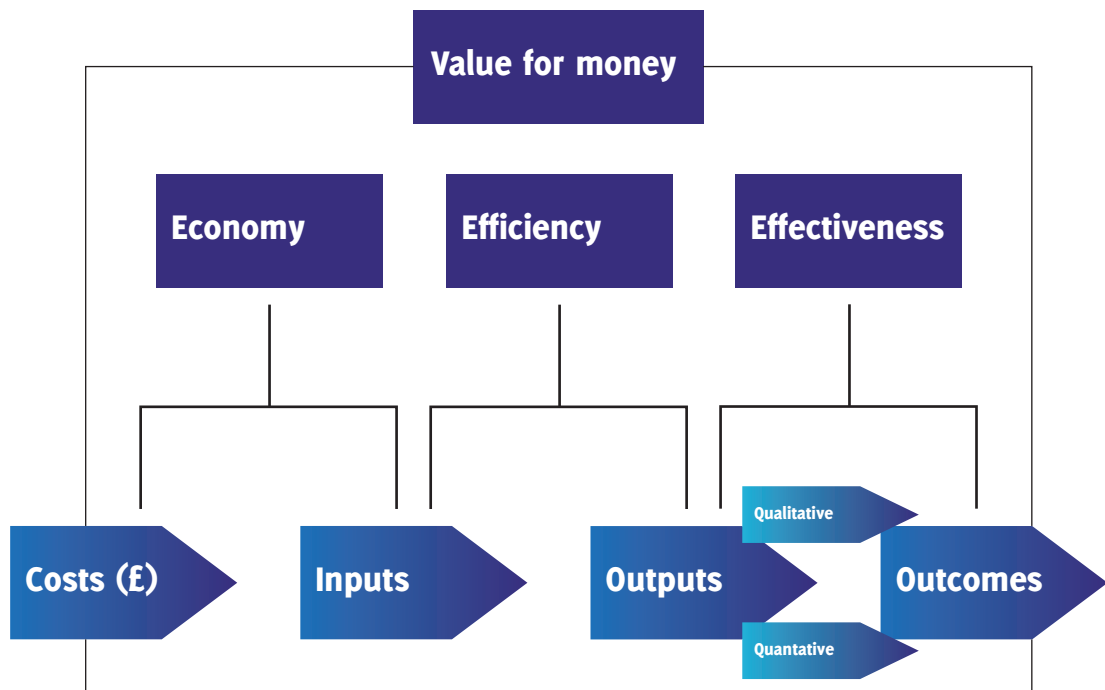
4 Casework standards in relation to quality of decision-making are correct and timely with consideration to the cost of prosecution being evident

- Lawyers understand the impact of their decisions on GFS fees.
- Lawyers make good decisions ensuring that only appropriate cases incur GFS fees.
- Decisions not to prosecute (or accept a plea) are made in a timely manner so as to minimise GFS fees.
- Effective case progression prevents any unnecessary hearings.
- Only appropriate and necessary pages of evidence are served.

F Defining value for money for the purpose of this inspection

Put simply, value for money is about obtaining the maximum benefit with the resources available. VFM is about achieving the right local balance between economy, efficiency and effectiveness. VFM not only measures the cost

of goods and services but also takes account of the mix of cost with quality, resource use, fitness for purpose and timeliness to judge whether or not, together, they constitute good value. Public services are no different.



Economy is what goes into providing a service, such as the cost per hour of paralegal officers or the rent per square metre of accommodation. **Efficiency** is a measure of productivity ie, how much you get out in relation to what is put in. For example, the number of effective prosecutions made per lawyer. **Effectiveness** is a measure of the impact that has been achieved, which can be either quantitative or qualitative. Examples include how many defendants pleaded guilty at first hearing (quantitative), and feedback from different sources such as the courts and police about the standard of prosecutors in court (qualitative).

VFM is not about 'cuts' and can be achieved in different ways, for example:

- Developing strategies to prevent or reduce the need for more intensive or costly services and to manage demand.
- Reducing costs (eg, labour costs, better procurement and commissioning) for the same outputs.
- Reducing inputs (eg, people, assets, energy, materials) for the same outputs.
- Getting greater outputs (eg, extra service or productivity) for the same inputs.
- Getting improved quality (eg, better casework decisions) for the same inputs.
- Getting proportionally more outputs or improved quality in return for an increase in resources.

Assessing and measuring VFM is, however, a challenge. Some elements, such as quality and sustainability, may be subjective, difficult to measure, intangible and misunderstood. 'Value' can often take years to materialise. What is VFM at one point in time may not be a year later.

Assessing VFM in a CPS context is further complicated because the CPS has a monopoly on prosecutions therefore it is difficult to compare against any industry standards. The strong interdependencies with other criminal justice organisations adds to the complexity of assessing VFM. A strong element of good, informed judgement is therefore required when considering whether VFM has been satisfactorily achieved or not, and how it might be improved.

For this particular inspection we have concentrated on effectiveness of the current GFS and whether costs can be controlled. It is important to note, however, that the inspection's purpose was to examine whether justice was delivered appropriately and in a way that offered value for money. We therefore refer in this report to controlling costs rather than reducing costs.

G Summary of the Court Business Unit's audit findings

The CBU provided the inspection team with 36 audit reports, comprising of 31 health check reports and five full audit reports covering the period 2009-10. An analysis of these reports included the following recommendations:

- In 22 reports, recommendations were made to improve the way paralegal officers update every hearing on the finance folder with sufficient detail, including agreeing pages at court by the prosecuting advocate, the start and end date of cracked trials to be recorded accurately and the running total of the GFS count should be routinely completed on notices of additional evidence and case files.
- In 25 reports, recommendations were made to introduce or increase management checks to ensure the accuracy of work done by the fees clerk.
- In 19 reports, recommendations were made to introduce management checks to assure the standard of file endorsements on the finance folders and the FISTs by paralegal officers.
- In 13 reports recommendations were made for reviews to be undertaken with regard to the Area processes for the instruction of a QC alone or more than one advocate to ensure that they accord with guidance.



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