

Fees Bulletin No.3 of 2018

Electronic Material and Revised NAE

Issue No 3
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Re: The Remuneration of evidence held and served electronically and the request by defence practitioners to provide a page counts for that evidence.

1. Issue

The Graduated Fee Scheme was designed at a time when evidence was served in a paper format. Evidence today from electronic devices is now held and served electronically. To assist both the prosecutor and the defender the CPS moved to adding to the notice of additional evidence a box to record the number of pages of evidence. This has caused some discussion about how evidence is now recorded and how to reflect evidence held and served electronically.

How evidence is treated and paid is set out in the [GFS Manual of Guidance Scheme C February 2018](#) and [Fees Bulletin 1 of 2012](#).

For paralegal officers, assistants and fees clerks the current NAE did not capture how evidence was served. To provide some clarity the NAE front sheet has been amended, breaking down evidence into how it is served and how it should be remunerated under GFS Scheme C. This information will assist not just the CPS but defence practitioners for billing purposes. Below is the extract from the revised NAE showing the breakdown of evidence served. A revised copy of the NAE can be found on CMS and old copies should no longer be used. The key is that any evidence held and served electronically such as mobile phone data should not be included with the evidence totals as a page but for the purposes of remuneration for defence practitioners, a notional page count should be recorded in the separate box.

Extract from the revised NAE front sheet:

Breakdown of the evidence served to date and the method of service			
Statements	Documentary exhibits including records of interview and photographs	Transcripts of evidence	Number of Witnesses

For the purposes of the remuneration of defence counsel the notional page count for evidence held and served electronically would be :-

Remuneration for evidence held and served electronically for the prosecutor will be paid subject to paragraph 74B of the GFS Manual of Guidance as reasonable viewing time.

2. Recent developments following requests by defence practitioners to have evidence held and served electronically, treated as pages.

Below are two cases where the issue of what can be treated as a page for defence remuneration purposes. The first considers how to arrive at a notional page count and what format of the evidence should be used to arrive at that notional figure. The second looks at the broader issue of whether if a judge is invited by the defence to served material as evidence; such an order should be made.

- **R v Daugnitis (Jan 18, SCCD ref 154/17, 155/17 and 177/17) (Defence appeal)**

The recent Costs Judge decision considered the appropriate calculation of a page count from electronically held evidence and the appropriate format from which the page count should be obtained.

In this case evidence had been served in both pdf and Excel formats and the decision dealt with which page count should be used. The Cost judge stated that the pdf version was the appropriate version. The reasoning was that the Excel print preview divides the spreadsheet, but does not necessarily reflect the manner in which the information should be read. The decision also stated that Excel print previews will vary according to the formatting, settings and the version of excel being used, whereas the pdf format presents documents in a form to be read and printed in a page format.

Therefore, wherever possible, if it is necessary to paginate electronically held material, the pdf version should be the page count provided as part of the notional page count on any NAE.

- **Extract from the Legal Digest June 2018**

R v MA [2018] 2 Costs L.R. 419

Summary:-

Following the downloading of data from the defendant's mobile phone, the prosecution had served as evidence a statement from a police officer who exhibited extracts of the text messages. This was the material which was said to be probative of the case. No further data was served in evidence. They were not just selected texts but the full string of texts for certain relevant time periods.

The defence requested an order from the Judge that the prosecution should serve as evidence the 2 discs of data from the phone and a PDF report of the contents. The Recorder of Leeds refused the defence.

3. Any queries regarding this guidance should be directed to the Court Business Unit at: CBU@cps.gov.uk

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