



Legal Services Commission - Outcome of Consultation

Criminal Bills Assessment Manual

Consultation Concluded 31 January 2005

General

The Legal Services Commission published a consultation paper on 13 December 2004 on amendments to the General Criminal Contract and guidance manuals, including the Criminal Bills Assessment Manual (CBAM).

The Law Society were the only respondent to the consultation to make comments on the proposed changes to CBAM. Each point is detailed below with the Commission's response.

The final changes to CBAM are detailed in this document and will be implemented with effect from 30 April 2005.

A revision marked version of CBAM will be published on the Commission's Website at www.legalservices.gov.uk

Outcome of Consultation

Response	Commission Response
<p>Bail Provisions</p> <p>The Law Society recognises that High Court bail applications, in criminal proceedings, have been removed by the Criminal Justice Act 2003. However, we are confused by the reference to 1 September 2004 as the abolition date, as High Court jurisdiction in relation to bail was removed on 5 April 2004 by virtue of The Criminal Justice Act 2003 (Commencement No.3 and Transitional Provisions) Order 2004. Whilst it is outside of the scope of these particular amendments, the Society remains concerned that there is no funding available for bail variations in the magistrates' court as a result of conditional police bail imposed by section 37(7)(a) Police and Criminal Evidence Act 1984 (as amended), despite the assurance of the Attorney General during the passage of the Criminal Justice Bill through the House of Lords. The Society would ask that the Commission use its best endeavours to secure the honouring of the pledge to Parliament.</p>	<p>Abolition date corrected.</p> <p>The Commission is aware of the position and have requested that these are brought within scope of the Criminal Defence Service</p>
<p><u>Confiscation and forfeiture proceedings</u>: the Law Society welcomes the clarity afforded by the additional text.</p>	<p>Noted</p>
<p>Effective Trial Management Project</p> <p>The Society is concerned by the wording of 2.5 of the proposals. The first issue is the definition of what would constitute "fee earning" work under this provision. The Society is of the view that all work in connection with effective trial and case management is fee earning work, regardless of whether the work is undertaken by a nominated contact or other person within the supplier organisation. It should not be a requirement that the task undertaken actually progresses the matter, merely that it was either done (a) with an intention of progressing the matter, regardless of whether it did in fact so progress, or (b) as a direct consequence of a court order or request by a court or other criminal justice agency.</p>	<p>The guidance has been amended at 2.5 to clarify work which can be claimed.</p>
<p><u>Para. 2.5.3</u>: The Society makes the same point as above and asks that the work be remunerated if it is done under</p>	<p>As above.</p>

either subsection (a) or (b) as outlined above.	
<u>Para. 2.5.5:</u> The Society does not understand the purpose of this provision and regards it as inconsistent with case progression initiatives currently underway. It is not an office overhead to speak to court staff, and therefore this work will either have to be recognised as remunerable or it will not be done by suppliers, thereby causing a corresponding rise in claims for waiting and in some instances a large claim for waiting that could have been alleviated by effectively liaising with the court to ensure the smooth listing and progression of the list.	This paragraph has been expanded to clarify the circumstances in which a claim would be justified.
Drug Treatment and Testing Orders Save that section 209-211 are not at the time of writing in force, there is no objection to this amendment. The Commission may wish to insert the following in the event that the provisions are not in force by April: “..and is intended that it be repealed and replaced...” The Society does however recognise that a lack of clarity in the wording of this section would not take proceedings out of scope, and is therefore not unduly concerned.	Amended as suggested.
Funding for Anti-Social Behaviour Order The Society welcomes the clarity provided by the table and commends the Commission on it. We are however concerned in relation to advocacy assistance that some suppliers may read the table as automatically bringing such proceedings within scope, when in fact there must be justification recorded for not using a Duty Solicitor for example. In order to protect suppliers, we would like to see a paragraph reference to the detailed provisions contained in the General Criminal Contract.	Reference added as suggested.
Electronic presentation of evidence The Society has no comment to make on the amendments identified under this heading.	Noted
Charging for the retention of bodies Paragraph 4 places a requirement on the defence team to be able to demonstrate on file that best efforts were employed to have the defence post mortem carried out at the earliest opportunity in accordance with Home Office circular No 30/19-99. The circular referred to makes it clear that the body must be retained for 14 days after the circulation of the first post mortem report unless advised by all parties that they are content to have the body released earlier. At what point will mortuary costs be incurred by the defence?	Amendment made to provide further clarification of when it is considered reasonable for defence costs to be incurred.
The implication is that mortuaries will be charging storage on a daily basis and the deemed ‘good practice’ contained in the circular rightly place a very high expectation on all parties to act expeditiously. However, the Society would not accept that failure to meet such high expectations on any specific case should be used to withhold the payment of disbursements that will now accrue.	Payment will be made where the costs incurred are reasonable and justified.
Due to changes in the charging policies of mortuaries, the Commission has, in these changes, made it clear that costs incurred can be claimed back as disbursements. However, it is difficult to see the relevance to this under	This guidance has been included as these costs are usually incurred during the investigation.

<p>the General Criminal Contract as the contract does not extend to Crown Court work. The guidance does however cover Crown Court work for individual case contracts and it must be presumed to be included for these cases only. Clarification is requested as to whether this is the case, or is it the intention of the Commission to extend the remit of Criminal Bills Assessment Manual to Crown Court work?</p>	
<p>The Appeals Procedure on Costs Assessment 11.5 Assessments and Cost Appeals <u>Para. 11.7.5:</u> This allows for reductions to be made to all claims submitted. The Law Society request that this be reviewed to exclude costs associated with e.g. standby and CDS7 as the former is a flat rate and not open to e.g. overclaiming and the latter are individually assessed and reduced when appropriate and cannot therefore be deemed to be overclaimed.</p>	<p>This is already the case and therefore further expansion is not necessary.</p>
<p>11.6 Appeals There is a possible anomaly in paragraph <u>11.6.11</u>, as it says that the Commission will notify their intention to attend a Costs Committee when they send out the agenda. It then goes on to say that attendance will only be undertaken when the firm indicates that it wishes to attend. There is no requirement on the firm to notify the Commission that they wish to attend before the agenda is sent out.</p>	<p>The guidance has been drafted to reflect the changes made to the General Criminal Contract.</p>
<p>11.7 Cost Appeals Committees This allows appeals to be made on 'points of principle' to a Costs Committee. It does not require that the Committee that originally considered the appeal considers the point of principle. We suggest that it would be appropriate to ask that a separate Costs Committee to the original one considers the 'POP' as a mechanism to ensure the original committee does not self justify their decisions.</p>	<p>The guidance has been drafted to reflect the changes made to the General Criminal Contract.</p>
<p><u>Para 11.7.5:</u> The Law Society is concerned that the requirement for the Regional Director to seek the opinion of the LSC legal department before seeking their own point of principle is not referred to. This paragraph should be re-inserted. Also, whilst it states that a Regional Director can certify a point of principle within 21 days of a Costs Committee decision, it does not go on to say that if they fail to meet this time frame s/he loses the right of appeal which we believe it should.</p>	<p>The guidance has been amended to clarify the process and time limits.</p>
<p>We would suggest enlarging the scope of paragraph 11.7.3 so that the time limits apply to everyone, including the Commission. This could be done by amending the first sentence of paragraph 11.7.3 to say 'Failure to comply with this time limit.....', and by moving this paragraph down to below paragraph 11.7.5.</p>	<p>This is covered by the amendment to 11.7.5.</p>
<p>There must also be some flexibility built into the provision that the right to appeal is lost if the firm fail to comply with the time limit. For example the appellant may be a sole practitioner who may require more time to prepare the appeal, or the practitioner concerned may fall ill.</p>	<p>Further amendment is not considered necessary as either side can request an extension.</p>
<p>11.8 Basis for Assessments and Appeals <u>Para. 11.8.1:</u> This paragraph states that the Costs</p>	<p>Amended as suggested.</p>

<p>Committee and Cost Appeal Committee must assess in accordance with requirements of the Contract 'and the Guidance'. This cannot be acceptable as it effectively gives the guidance the same status as the Contract, yet guidance is neither mandatory nor contractual. Whilst the LSC assessors must follow the guidance it must surely be the purpose of the Costs Committee/ Cost Appeal Committee to interpret the Contract in the format it is written and not be bound by non-contractual guidance. The Contract refers to 'having regard to' the guidance and this phraseology should be preserved.</p>	
<p><u>Para. 11.8.2:</u> There are occasions when papers are removed from a file and inserted e.g. into a Crown Court file when the client 'elects' in an either way matter. This may only come to light following queries on audit as many firms simply pass their files to the Commission without the additional wasted time of reviewing them first. If there are good reasons why evidence was not on the file at the time of audit but clearly exists, for example Advanced Disclosure with hand written notes attached that are evidenced on the Crown Court file, there is no good reason why they shouldn't be taken into account retrospectively. 11.8.2 does not allow the LSC this flexibility and as it stands 11.8.1 would prevent the Costs Committee from substituting an alternative decision on review. We suggest the wording of paragraph 11.8.2 be amended to say: '...where the claims are supported by the <i>evidence available</i> on the file.....'.</p>	<p>It is not considered necessary to amend the guidance as such evidence can be submitted on appeal with good reason for initial non inclusion.</p>
<p><u>Para. 11.8.3:</u> Disbursements will only be paid when reasonably incurred and reasonable in amount. The Law Society remains concerned about how this could be interpreted in respect of the charges for the retention of bodies.</p>	<p>It is not considered necessary to further expand the guidance.</p>

In addition to the above the Law Society has made a number of suggestions for further amendments to CBAM. A number of these have been raised and the Commission has given reasons for not making the amendment on previous occasions. If the Commission did agree that these suggestions should result in a change to CBAM it would be necessary for these to be included in a future consultation. The Commission will give further consideration to each of the suggestions made by The Law Society and will include any resultant changes as part of the next consultation.

Summary of Changes to Criminal Bills Assessment Manual – 30 April 2005

The following changes are made to the Criminal Bills Assessment Manual with effect from 30 April 2005.

1. Bail Provisions

Amend paragraphs 1.3.8 and 1.3.9 (High Court Proceedings within the Criminal Franchise Categories) to reflect the impact of Sections 16 and 17 of the Criminal Justice Act 2003 on bail provisions.

In addition changes are made to reflect the impact of the Proceeds of Crime Act in the funding and paying of restraint and confiscation proceedings.

8. The following is a summary of High Court proceedings within the criminal franchise category and covered by the GCC:

High Court Proceedings	Summary
Bail proceedings	<p>Paragraph 2(2) of Schedule 3 to the Access to Justice Act 1999 provides that a grant of representation automatically covers representation for the purposes of any related bail proceedings. <u>This will include bail proceedings</u>Therefore representation <u>in the High Court prior to the 5 April 2004 when such proceedings were abolished under Section 17 of the Criminal Justice Act 2003.</u> Otherwise bail proceedings <u>shall be</u> covered by the original grant of a representation order in the magistrates' court. The General Criminal Contract provides that costs in the bail proceedings will be assessed by the Commission rather than the High Court and will be treated as part of the costs of representation under the magistrates' court representation order.</p>

High Court Proceedings	Summary
Representations against a voluntary bill of indictment	These are mainstream criminal proceedings within Section 12(2)(a) of the Act. However Regulation 9(2) of the General Regulations provides that application for the representation order is made to the Crown Court. Bills will be assessed by the High Court.
<p>Confiscation and forfeiture proceedings (RSC Order 115)</p> <p>N.B. For proceedings under the Proceeds of Crime Act 2002 see guidance in Volume 3 of the LSC Manual</p>	<p>Under Regulation 3(3) of the General Regulations these are prescribed as incidental to the criminal proceedings from which they arise. By virtue of paragraph 2(2) of Schedule 3 the substantive order granted for the criminal proceedings therefore automatically covers representation in the High Court in the confiscation and forfeiture proceedings. Costs of such work will be assessed by the High Court. <u>Such provisions shall continue to apply despite the changes introduced by the Proceeds of Crime Act 2002, as it is anticipated that there will be a reasonably lengthy transitional period, with a number of cases being billed under the former provisions, since many cases started before the 2002 Act and will take some time to conclude. Caseworkers and suppliers should ensure that cases are billed in accordance with the legislation under which they were brought rather than just assuming that it will be the new legislation that will apply. Further clarification can be found in an article in Focus on CDS issue 15 (August 2004), titled “Confiscation, Restraint and Receivership Proceedings before and After the Proceeds of Crime Act 2002”.</u></p>
Proceedings to quash an acquittal	Tainted acquittal proceedings under the Criminal Procedure and Investigations Act 1996 are prescribed as incidental to the criminal proceedings from which they arise and are therefore dealt with in the same way as confiscation and forfeiture proceedings described above.

High Court Proceedings	Summary
Applications to state a case (from either the magistrates' court or the Crown Court)	These are mainstream criminal proceedings within Section 12(2)(a) of the Act. An application for representation in a case stated appeal will be made to the High Court (paragraph 2(2) of Schedule 3 of the Access to Justice Act 1999).
Judicial review and habeas corpus arising out of criminal investigations or proceedings	These are not criminal proceedings – see Regulation 3(4) of the General Regulations and paragraph 3 of Schedule 2 of the Access to Justice Act 1999 (Commencement No. 7, Transitional Provisions and Savings) Order 2001. Legal Representation is available under the Community Legal Service in accordance with the Funding Code Procedures.

9. Part C, Rule 1.7 GCC provides that the High Court continues to be responsible for assessing claims for work undertaken in criminal proceedings in the High Court, unless the claim falls within the Commission's in house assessment limit for civil bills which ~~is~~ will increase shortly to up to £2,500. ~~However, applications for bail in the High Court are treated as an intrinsic part of the work under a representation order granted in the magistrates' court and therefore any work undertaken in the High Court relating to a bail application must be included and assessed by the processing centre as part of a standard or non-standard fee claim (see Part B, Rule 5.8 note 11). This work is paid at magistrates' court rates and forms part of the core costs for standard fee purposes. All other High Court Work is paid at the High Court rates set out in Part E, Section ~~ection~~ ection 3.6 GCC.3.6 GCC.~~

2. Effective Trial Management Programme

Insert new section 2.5 and renumber remaining sections. This change deals with the introduction of the "Effective Trial Management Programme" and issues with regard to "chargeable administrative work" carried out in pursuance of the "Criminal Case Management Framework".

2.5 Effective Trial Management Issues

1. The Effective Trial Management Programme (ETMP) is a programme that is seeking to reduce the number of ineffective court hearings by 27% by April 2006. In order to do this it has introduced the Criminal Case Management Framework. The Programme is being piloted in a number of court centres nationally.

2. The Criminal Case Management Framework introduces the role of Case Progression Officer at the court and within the CPS. These officers are there to liaise directly with a nominated contact from the defence firm. The Commission will pay for work undertaken in connection with the case progression officer where such work is done (a) with an intention of progressing the matter, regardless of whether it did in fact progress, or (b) as a direct consequence of a court order.
3. Consequently, certain aspects of case management shall now constitute claimable work where undertaken (a) with an intention of progressing the matter, regardless of whether it did in fact progress, or (b) as a direct consequence of a court order even if such work might hitherto have been considered administrative.
4. An example of such qualifying work would be the completion and submission to the court of a pre-hearing readiness form.
5. An example of work that cannot be claimed and that is still treated as an overhead is time spent speaking to the court usher, where such attendance is notional and nominal in terms of times or costs, for example, asking when the case will be called or seeking to have the case moved to the head of the list. Claims of one unit or more, for such specific attendances, will need to be supported by clear evidence on the files as to why so long was taken.
6. All practitioners should be in possession of a copy of the Criminal Case Management Framework. It will be incorporated into the Criminal Procedure Rules and the General Criminal Contract in due course.

3. Bail Provisions

Insert new paragraph 3.2.7 and delete current paragraphs 3.2.7-10. Changes to the High Court Bail Applications section to reflect the impact of Sections 16 and 17 of the Criminal Justice Act 2003 and changes to bail provisions.

High Court Bail Applications

7. Section 17 of the Criminal Justice Act 2003, effective from 1 April 2004, abolished the inherent power of the High Court to hear an application for bail where the magistrates' court has granted or withheld bail or has varied conditions. Section 16 of the same Act has the same effect with regard to applications originally dealt with by the Crown Court.
- ~~7. Hearing code HB denotes a high court bail application. Part B, Rule 5.8 note 11 GCC confirms that both Crown Court and High Court bail applications are treated as ancillary to the main proceedings and are consequently covered by a representation order granted by the magistrates for the principal proceedings. Any work related to a bail application would be included in the core costs.~~

- ~~8. If a Crown Court judge refuses to grant bail an application may be made to a High Court judge in chambers. It is possible to apply directly to the High Court without making a Crown Court application first – the High Court may often be able to hear an application more speedily than the Crown Court. The High Court also has jurisdiction to vary the terms on which bail was granted by a magistrates' court.~~
- ~~9. The procedure is governed by RSC Order 79, Rule 9. The applicant calls upon the prosecution to show cause why he or she should not be granted bail. The claim is supported by a witness statement setting out the grounds of the application. This must be served on the prosecution before the hearing. The application is heard by a judge sitting in chambers. The client is not produced at court. The solicitor has rights of audience to appear at the hearing, but unassigned counsel may be instructed (or assigned counsel if assigned under the magistrates' court order). If the application is refused, the applicant may not make any further application for bail, unless there are new arguments as to fact or law.~~
- ~~10. If a High Court bail application is made after the proceedings have been committed to the Crown Court for trial, then the work in relation to the bail application forms part of the Crown Court bill and will be claimed and assessed at the appropriate Crown Court rates by the taxing team.~~

4. Drug Treatment and Testing Orders

Amend paragraph 3.10 on Drug Treatment and Testing Orders (DTTO) to reflect the commencement of Sections 209 through to 211 of the Criminal Justice Act 2003.

3.10 Treatment and Testing Orders (DTTO)

1. This type of sentence was introduced by the Crime and Disorder Act 1998 and it is intended to be repealed and replaced by Sections 209 to 211 of the Criminal Justice Act 2003 when they come into force. These provisions are ~~and is~~ designed to address the specific problems of defendants with drug addictions. If a magistrates' court imposes a DTTO there is at least one mandatory review hearing in open court during the period of the DTTO. The defendant must attend this hearing with his or her probation officer. Further reviews may take place at the court's discretion and may sometimes only involve a probation officer presenting a progress report to the court.

5. Funding for Anti-social Behaviour Orders

Insert new paragraph 3.15.14 and table of arrangements for funding assistance after paragraph 3.15.13.

14. When considering whether such proceedings are within scope of Advocacy Assistance suppliers must first consider whether one of the relevant merits tests is met. Suppliers are referred to Part B, Rule 4.3, GCC.

TABLE OF FUNDING ARRANGEMENTS FOR ANTI-SOCIAL BEHAVIOUR ORDERS

<u>Legislation</u>	<u>Section</u>	<u>Court and nature of Order sought</u>	<u>Funding available</u>
<u>Crime and Disorder Act 1998</u>	<u>1 & 1 d</u>	<u>Magistrates Court.</u> <u>Anti-social Behaviour Order, sought by relevant authority to protect public from anti-social behaviour.</u>	<u>Advocacy Assistance</u> <u>Suppliers self grant using devolved power. Maximum limit on funding of £1,500 extendable upon application to the Commission.</u> <u>Courts have no jurisdiction to Grant Representation Orders in such cases.</u>
<u>Crime and Disorder Act 1998</u>	<u>1 b (5)</u>	<u>County Court.</u> <u>Anti-social Behaviour Order, sought by relevant authority to protect public from anti-social behaviour</u>	<u>Funded by Community Legal Services, i.e Legal Help or a Civil Certificate. Out of scope for funding under the General Criminal Contract.</u>
<u>Crime and Disorder Act 1998</u>	<u>1 (c)</u>	<u>Magistrates Court or Crown Court.</u> <u>Following conviction of an offence where the Court considers that the defendant acted in an anti-social manner and an order is necessary to protect the public from further anti-social acts.</u>	<u>Representation Order. Such proceedings are treated as incidental to the main proceedings, therefore funded under the Representation Order granted in respect of the substantive criminal charges.</u>
<u>Crime and Disorder Act 1998</u>	<u>2 & 2A</u>	<u>Magistrates Court.</u> <u>Sex Offender Order, sought by relevant authority where person has acted in such a way as to give cause to believe that an order is necessary to protect the public from serious harm.</u>	<u>Advocacy Assistance, as above.</u> <u>Courts have no jurisdiction to Grant Representation Orders in such cases.</u>
<u>Crime and Disorder Act 1998</u>	<u>4</u>	<u>Appeal against an Anti-social Behaviour order by the defendant to the Crown Court.</u>	<u>Advocacy Assistance.</u> <u>In very exceptional circumstances, the Commission can grant Representation Orders.</u> <u>Courts have no jurisdiction to Grant Representation Orders in such cases.</u>
<u>Anti-social Behaviour Act 2003</u>	<u>2, 4 & 5</u>	<u>Magistrates Court.</u> <u>Closure Orders, sought by relevant authority to prevent the unlawful use of the premises for, production or supply of a Class A controlled drug and such use is associated with the occurrence of disorder or serious nuisance and the making of such an order is necessary to protect the public from the same.</u>	<u>From 17th May 2004, Advocacy Assistance. Prior to that date cases could only be funded using the exceptionally funding routes, see below for more details.</u> <u>Courts have no jurisdiction to Grant Representation Orders in such cases.</u>
<u>Anti-social Behaviour Act 2003</u>	<u>20 & 26</u>	<u>Magistrates Court.</u> <u>20. In cases of truancy or exclusion from school where the court believes that the making of such an order will improve the attendance of the pupil at school or their behaviour.</u> <u>26. Parenting contract in respect of criminal conduct and anti-social behaviour, where the court is of the view that such a contract could lead to the prevention of the child from entering into criminal conduct and anti-social behaviour.</u>	<u>Exceptional funding only.</u> <u>Neither of these sections are within the scope of either the General Criminal or Civil Contract.</u>
<u>Crime and Disorder Act 1998</u>	<u>1 & 1D;</u> <u>1 B (5);1 C;</u> <u>2 & 2A</u> <u>4</u>	<u>Magistrates and Crown Court.</u> <u>Breach proceedings.</u> <u>Breach proceedings.</u> <u>Breach proceedings.</u> <u>Breach proceedings.</u>	<u>Representation Order.</u> <u>Representation Order.</u> <u>Representation Order.</u> <u>Representation Order.</u>
<u>Anti-social Behaviour Act 2003</u>	<u>2, 4, 5;</u> <u>20, 26;</u>	<u>Breach proceedings.</u> <u>Breach proceedings.</u>	<u>Representation Order.</u> <u>Representation Order if the interests of Justice Criteria are met, unlikely as non- imprisonable offence.</u>

6. Electronic Presentation of Evidence

Amend paragraph 4.10.3 to update the definition of a Very High Cost Case.

Add new paragraph 4.10.5 to record standardisation of fees nationally for this work as the result of one provider being awarded the contract for all Crown Court Estates.

3. Very high cost crime cases are handled under a different regime through individual case contracts. The Complex Crime Unit must be notified of any case that meets the criteria i.e. cases which are likely to run for 41 days or longer ~~minimum of 25 days at trial or where the total defence costs are likely to exceed £150,000~~. Where the use of EPE is sought in a case managed by this Unit under an individual contract, the solicitors must include the expenses in a costed stage plan. The case contract manager will then discuss the proposals with the defence team. In respect of what is an allowable item (i.e. a disbursement) and what is not (i.e. an overhead), the contract manager will follow the same guidance as those dealing with requests for prior authority. Further, whilst dealing with each request on its own merits, the same test of reasonableness will apply and the contract manager will be seeking to establish that the use of EPE will bring about an overall saving in costs.
4. It is important that any application for prior authority or permission from the Complex Crime Unit for the use of CAT or EPE technology is made at the earliest possible opportunity by the defence to ensure that there is no delay to the trial process.
5. The Contract for real time transcription services has now been awarded to Wordwave for the entire Crown Court Estate. Accordingly the prices for Live Note have dropped dramatically and standard pricing regimes have been introduced for both inner and outer London. Wordwaves' rates can be found on their website www.wordwave.co.uk.

7. Retention of Bodies

Insert new section 4.16 and renumber remaining sections. Guidance added with regard to the charging for retention of bodies and reconstruction work as a result of a change in practice by mortuaries.

4.16 Charging for the retention of bodies

1. It is becoming increasingly common for mortuaries to charge firms for the cost of retaining bodies after the Home Office post mortem examination has been performed and before the defence post mortem is carried out. Such storage requires bodies to be held in specific "ideal" conditions to prevent further decomposition prior to that examination, thus enabling the defence the best opportunity available to examine the evidence. Additionally, the defence post mortem, which is funded by the Commission, usually by way of prior authority, is limited to that examination only. It has not previously included reconstruction and cosmetic repair of the body before it is released to the family for burial. Such work is skilled taking up valuable time of the mortuary technicians. As the need for this extra work is occasioned by the examination by the defence appointed

pathologist, mortuaries have concluded that it is proper to charge the defence for the cost of carrying out the work and the storage costs incurred.

2. In light of this change in practice by the mortuaries, the Commission shall pay the reasonable cost of charges incurred as outlined in the above circumstances. It will not authorise payment for the costs of any storage charges that have not been incurred directly by the defence. Such charges will be considered to have been incurred where retention occurs outside any time limit directed by the coroner and specifically requested by the defence in order to facilitate the carrying out of the defence post mortem.
3. Claims for these costs should be made by way of a disbursement on the bill and will need to be supported by a copy of the invoice from the mortuary which should clearly show reasons for retention, the daily rate charged for retention and details of any reconstruction work carried out.
4. Files should also clearly demonstrate that best efforts were employed to have the defence post mortem carried out at the earliest opportunity in accordance with the Home Office Circular No. 30/19-99 Post Mortem Examination and the Early Release of Bodies (Appendix 4).

8. The Appeals Procedure

Amend section 11 to clarify and reflect changes to the General Criminal Contract effective from the 31 October 2004.

Amend Section heading and insert the following prior to 11.1 Introduction.

11. The Appeals Procedure on Costs Assessments

There are two distinct appeals procedures under the General Criminal Contract with regard to appealing assessments of costs on criminal cases.

The first procedure detailed relates to appeals made in respect of disputed costs assessments on non standard fee claims (form CDS7) and in respect of refusals to grant prior authority for expenses.

The second system sets out the procedure to be followed when firms appeal against assessments made on a Criminal Contract Compliance Audit.

Insert additional heading and paragraphs after 11.4.13 as follows:

11.5 Assessment and Costs Appeals

1. The application of findings generally on assessment, pursuant to Rule 1.10.
2. This rule enables the Commission, on assessing a sample of claims to apply any findings that we make to other claims for payment for Contract work.

3. When findings are applied in this way, it can be done for all cases commenced under the current Contract (or any other Contract that it has replaced) where costs have been claimed from the Commission and either:
 - (a) In the case of mis-claiming, since the date permitted by Clause 12.B.9 of the Contract Standard Terms;
 - (b) In the case of over claiming or other claiming issues:
 - (i) since the date the file sample was requested for the last contract compliance audit, or
 - (ii) from a date 12 months immediately preceding the date the file sample was requested for Assessment on the current audit,

whichever is more recent.
4. “Mis-claiming” is defined as claiming in a manner that is clearly contrary to a specific rule in the Contract and where no discretion arises as to payment. For instance, claiming the incorrect rates, failing to claim post charge Advice and Assistance provided on the same Case as part of the standard fee or claiming for Advocacy Assistance outside the scope of the Contract.
5. “Over claiming” is defined as claiming more than the Commission determine to be reasonable on Assessment under Part C, Rule 1.13, but where discretion arises as to the amount allowable. An example could be taking longer to perform an item of work that on assessment is considered reasonable in light of the evidence provided and the nature of the case and the client. Another might be the unreasonable incurring of a disbursement.
6. “Findings” includes not only findings as to particular practices (e.g. a systemic failure to assess financial eligibility) but also findings as to more general matters, e.g. claiming excessive time for preparation or attendances or the average percentage reduction on Assessment of a sample of files.
7. If the sample relates only to a specific group of files or Unit or Class of Work, then the finding will be limited to that specific group.
8. When findings are applied to a claim under this Rule, then that Claim has been Assessed by the Commission.

11.6 Appeals

1. If a solicitor disagrees with an assessment undertaken by a regional office, then he or she may appeal to the Costs Committee to review the determination (Part C, Rule 1.11 GCC).

2. The appeal can be in relation to the individual Assessments, or, on the basis that the firm disagree with the application of Rule 1.10 or both. Where, having considered the files before them the Costs Committee revises the average percentage reduction on the sample of files assessed by the regional office, then, unless the Committee directs otherwise it is the revised average that will be applied to the unassessed files under the terms of Rule 1.10. Additionally the Committee can also make its own findings under Rule 1.10 and may substitute such findings for those of the Regional Director.
3. The time limit for filing an appeal is 28 days from the date of receipt of the notification of the decision. Firms will be deemed to have been notified of the decision only when they are also in receipt of the returned audited files.
4. The appeal must be made in writing (setting out full reasons) and must be accompanied by the relevant files. Where a file is not sent within that period, the Assessment on the file will stand and the Commission will consider that the firm has waived its right of appeal.
5. The Regional Director will extend the 28 day time limit by a maximum of a further 14 days where the firm has requested an extension, for good reason, within the first 21 days of that 28 day period. Good reason could include a scenario where a sole practitioner is on holiday during the period, has been affected by a death of an immediate family member or where it is necessary to contact a third party, e.g. former fee earner to obtain additional evidence or information. No extension of time will be granted unless the request was received within the 21 day period and any extension shall, in any event be for no longer than an additional 14 days.
6. Where there is a failure to comply with any of the above, it is considered by the Commission that this is acceptance of the Regional Director's decision and the right to dispute it shall be lost.
7. Where an appeal is to proceed the Regional Director will endeavour to list the case before a Costs Committee within a reasonable period and:
 - (a) The Regional Director may make a written reply to any full reasons that are provided up to 21 days before the listed date.
 - (b) The appellant may then respond to any such written reply up to 7 days before the listed date.
8. Where additional representations are made by the firm over and above any permitted above, they may be included in the appeal but only with leave of the Committee, who in order to grant such leave will require good reasons to be provided to them as to why the relevant matters have not been raised before this point in time.
9. The aim of the process, requiring written representations, (appeal, reply and response) is to define and identify all of the matters that remain in dispute between the Commission and the firm so that the Committee are clear about what matters they are required to consider.

10. In addition, however, the Committee retains an inherent right to raise additional or new issues in exercise of its discretion to increase, confirm or reduce the Assessment.
11. Either party may attend at the appeal provided that notice is given to the other party and the Costs Committee. In order to attend at the appeal the appellant must provide notification of their intention to attend when they submit their written appeal. The Commission will notify of any intention to attend when it sends out the agenda. The Commission do not intend to attend in every case and will only attend where the appellant has indicated that they are attending the hearing. Neither party will remain or be allowed to remain in the presence of the Committee during any “in camera” deliberations.
12. For the purposes of the above such a rule does not relate to the presence of the Committee clerk who is a member of the Commission staff required to carry out administrative functions under the Review Panel Arrangements 2000.

11.7 Costs Appeals Committee

1. If the firm remain dissatisfied with the decision of the Costs Committee on an appeal they may within 21 days of receipt of notification of the decision, apply in writing to a Costs Committee to certify a Point of Principle of General Importance. Such an application must set out the wording of the Point (or Points) of Principle of General Importance that they wish the Costs Committee to certify. The Costs Committee will determine any such application to certify a point of Principle of General Importance on the papers only.
2. Where the Committee makes a certification as to the Point of Principle the firm may then, within 21 days of the receipt of the notification, apply in writing to the Costs Appeals Committee for it to determine that Point of Principle.
3. If the firm do not comply with this time limit (or any extended time limit that the Commission agree to) it will be deemed that the Costs Committee’s ruling has been accepted and that the right to dispute it is lost under Rule 1.11.
4. Time limits will only be extended where the application is made prior to the expiry of the initial time limit and where there are exceptional circumstances.
5. Where a Regional Director is dissatisfied with a decision of a Costs Committee brought on an appeal by the firm, he or she can, within 21 days of the decision certify a Point of Principle of General Importance and apply in writing to the Cost Appeals Committee for them to determine that Point of Principle. The Regional Director will require the consent of the Legal Services Commission’s Legal Director (who must agree that there is a general principle raised in the case) before making the referral. A failure by the Regional Director to make the referral within the 21 day time limit will mean the loss by them of the right to take such action. Notice of the same will be served on the supplier, who may, within 21 days of the receipt of the notice make written representations to the Costs Appeals Committee.

6. On considering the application the Committee will either:
 - (a) determine any Point of Principle of General Importance certified by the Costs Committee or Regional Director and, where appropriate, amend any of the Assessments of the Costs Committee to give effect to this determination or refer the matter back to the Costs Committee for it to do so; or
 - (b) determine that there is no Point of Principle of General Importance raised by the application before it and refuse the application accordingly.
7. The Costs Appeals Committee will usually determine the application on the papers before it but may exceptionally at its discretion grant a request by an appellant to attend and or be represented on the appeal, provided that the same right is granted to the other party to the appeal.

11.8 Basis of Assessments and Appeals

1. Any Assessment made by the Regional Director under Rule 1.1 (GCC Part C) and any appeal to the Costs Committee under Rule 1.11 and any application considered by the Costs Appeals Committee under Rule 1.12 shall take place on the basis of determining on the standard basis, whether work was actually and reasonably done and disbursements actually and reasonably incurred and whether time spent is reasonable in accordance with the requirements of the Contract and having regard to the Guidance and applying the remuneration rates set out in Part E of the General Criminal Contract.
2. Payment will only be made where the above criteria are met and where the claims are supported by appropriate evidence on the file at the time the claim was submitted to the Commission. There is no entitlement to claim for unrecorded time.
3. Disbursements will be assessed on the basis of determining whether they were reasonably incurred and are reasonable in amount subject to any prior authority that was granted.