

General Civil Contract (Solicitors)

Notice of amendment to Specification from 31 October 2004

The texts of Rules 2.14 – 2.18, as they will come into effect on 31 October 2004, are set out below.

The changes from the version of the Rules sent out in May 2004 are as follows:

- 1 Rule 2.16 has been deleted and replaced with the text set out below.
- 2 The following sentence has been added to the end of the first paragraph of Rule 2.17 ‘The Costs Committee will determine the application to certify a Point of Principle of General Importance on the papers only.’

Rules 2.14, 2.15, and 2.18 remain as in the version sent to you in May.

Text of Rules 2.14-2.18 of the General Civil Contract Specification applying from 31 October 2004

Rule 2.14 Assessments

At the conclusion of any matter, you must submit a report to the relevant Regional Director claiming an amount to be reconciled against the payments made to you under the Contract (a "credit") for the difference between the costs of the Controlled Work, including disbursements and VAT, less the value of the Controlled Work charge. The report must be submitted on a form and in a format approved by us. Credits claimed will be set off against the Standard Monthly Payments under your Work Schedule.

You may only claim for work that has been actually and reasonably done and disbursements actually and reasonably incurred in accordance with the provisions of the contract and that is supported by appropriate evidence on the file at the time of the claim. The relevant Regional Director may Assess the claim either before or after the credit in relation to that claim has been given. Where an Assessment is carried out after a credit has been given in relation to any matter, then that credit may be adjusted accordingly.

- 1 The report form for the purposes of this Rule will be the Consolidated Matter Report Form.
- 2 The setting off of credits against your Standard Monthly Payments will be without prejudice to our right to assess.
3. Although we have the right to assess every case that you claim for, we will normally assess a sample of your claims and apply those findings (usually expressed in terms of an average percentage reduction on the sample) by way of Assessment to other files instead. This is on the basis that we would be likely to arrive at a very similar overall result if we assessed every file to which the findings are being applied. This process avoids the cost and delay to both you and us that would be caused by our assessing every individual case and allows you to receive regular payments without having to wait for each individual claim to be scrutinised.

Rule 2.15 Applying Findings Generally on Assessment

- 1. When we Assess a sample of claims, we may apply any findings to your other claims for payment for Controlled Work.**
- 2. When we apply findings in this way, we may do so for all cases commenced under this Contract (or any previous contract it has replaced) where costs have been claimed from us either:**
 - (a) Since the date the file sample was requested for the last contract compliance audit, or**
 - (b) From a date 12 months immediately preceding the date the file sample was requested for Assessment on the current audit, whichever is the most recent.**
- 3. 'Findings' for these purposes include not only findings on particular practices (such as failing to assess financial eligibility) but in relation to more general matters, such as claiming excessive time for preparation or attendances or the average percentage reduction on Assessment of a sample of your files.**
- 4. If the sample relates only to a specific group of your files, then we will only apply the findings to that specific group.**
- 5. When findings are applied to a claim under this Rule, then that claim has been assessed by us.**

Rule 2.16 Appeals

- 1 If you are dissatisfied with any decision of the Regional Director as to the Assessment of the costs of Controlled Work, you may appeal to the Costs Committee.**

The appeal must be made in writing (setting out full reasons) within 28 days of notification of the decision, and must be accompanied by the file.

The Regional Director will extend the 28-day time limit by a further 14 days where you have requested an extension for good reason within 21 days.

Failure to comply with any of the above requirements means that you accept the decision of the Regional Director and lose your right to dispute it.

- 2 Where an appeal is to proceed then the Regional Director will endeavour to list it before the Costs Committee within a reasonable period and:**

- (a) The Regional Director may make a written reply to your full reasons up to 21 days before the listed date.**

- (b) You may respond to this reply in writing up to 7 days before the listed date.**

Any further representations may be admitted with leave of the Committee, who will require good reason.

- 3 Either party may attend and be represented on the appeal provided that notice is given to the other party and the Costs Committee. The Costs Committee may give procedural directions as to the determination of the appeal.**

- 4 On appeal, the Costs Committee shall review the Assessment whether by confirming, increasing or decreasing the amount assessed. The Costs Committee may apply their findings generally across files outside of the sample before them under the**

terms of Rule 2.15. However, no such decision shall apply to any completed Assessments which you have not appealed within the time limit.

1 Your appeal may be in relation to the individual Assessments, or on the basis that you disagree with the application of Rule 2.15, or both. On appeal, the Costs Committee will consider the Assessments on any individual files before them. Where the findings they make on those files revises the average percentage reduction on the sample of files assessed by the regional office, then unless the Committee directs otherwise that revised average will apply to your unassessed files under the terms of Rule 2.15. However the Committee has power to make its own findings under Rule 2.15 and may substitute such findings for those of the Regional Director.

2 If we do not receive an application for an appeal together with the relevant files within the required period, the Assessment stands. If you apply for an appeal within the 28 days, or extended, period but a relevant file is not sent within that period, the Assessment on that file stands. Where an Assessment stands, this means that you will have accepted the decision of the Regional Director and waived your right to appeal

3 Where within 21 days (i.e. at least 7 days before the expiry of the 28 day deadline) you request an extension to that deadline, the Regional Director will grant you a further 14 days beyond the 28 days if there was 'good reason' for the request. Good reason in this context would include a situation where for example, a sole practitioner is on holiday at the relevant time or it is necessary to contact a third party (e.g. a fee earner that has left the firm). We will not grant such an extension unless the request was received within 21 days, and the extension will not in any event go beyond the further 14 days.

4 We will return the files to you either before or at the same time as notifying you of the Assessment results. You will not be deemed to have been notified of the results of the Assessment (and therefore your time limit for appealing will not start to run) until we have also returned the files.

5 The Regional Director may make a written reply to your appeal, which must be sent to you at least 21 days before the date fixed for the Committee. You have the right to respond to this in writing up to 7 days before the date fixed for the Committee. The Committee has discretion to accept further representations outside of these two deadlines if it considers there is good reason.

6 The written representations (appeal, reply and response) should set out all matters that the parties wish the Committee to consider. Where an oral hearing takes place (see below) then permission of the Committee will be required to raise any new issues not set out in the written representations; in exercising their discretion the Committee will consider whether there was good reason why the issues could not have been raised previously. However, the Committee itself can raise additional or new issues in exercise of its discretion to increase, confirm or reduce the Assessment.

7 There is a right for either you or the Regional Director to attend or be represented on the appeal. If you wish to attend, you must give notice when you submit your written appeal (i.e. within 28 days of receiving the cost Assessment decision.) If we wish to attend, we must give notice when the agenda is sent out. We will not exercise our right to attend in every case, and will only do so in any event if you have indicated that you will attend the hearing. Our representative will not be present during any 'in camera' deliberations by the Committee.

8 For the avoidance of doubt, nothing in this Rule relates to the presence at the Committee of a clerk supplied by the regional office to carry out administrative functions under the Review Panel Arrangements 2000.

Rule 2.17 Costs Appeals Committee

If you remain dissatisfied with the decision of the Costs Committee on an appeal you 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. Your application must set out the wording of the Point (or Points) of Principle of General Importance that you wish the Costs Committee to certify. The Costs Committee will determine the application to certify a Point of Principle of General Importance on the papers only.

Where a Costs Committee certifies a Point of Principle of General Importance you may, within 21 days of receipt of notification, apply in writing to the Costs Appeals Committee for it to determine that Point of Principle.

If you do not comply with the above time limits (or any extended period agreed by us), you thereby accept the decision of the Costs Committee under Rule 2.16 and lose your right to dispute it.

We will extend the time limits for applying to the Costs Appeals Committee only if you request an extension before the time limit expires and there are exceptional circumstances.

If the relevant Regional Director is dissatisfied with the decision of a Costs Committee on an appeal brought by you, the Regional Director may within 21 days of that decision certify a Point of Principle of General Importance and apply in writing to the Costs Appeals Committee for them to determine that Point of Principle. Notice of such appeal will be served on you, and you may, within 21 days of receipt of such notice, make written representations to the Costs Appeals Committee.

On considering an application under this Rule, the Costs Appeal 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.

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.

1 This Rule gives you the right to seek a determination on a Point of Principle of General Importance when dissatisfied with the Costs Committee's decisions on Assessments of your costs. Since it is essential that there is consistency of interpretation across all areas the rule also allows the Regional Director to refer the matter to the Costs Appeals Committee where in his or her view a Point of Principle of General Importance has been raised by an appeal which requires a definitive decision. However the Regional Director will require the consent of the LSC's Legal Director (who will have to agree that there is a general principle raised by the case) before making the referral.

2. Clause 3.2 of the Standard Terms requires compliance with Points of Principle of General Importance.

3. The Costs Appeal Committee (or Costs Committee hearing an appeal under Rule 2.16) will adjourn an appeal hearing only for “good reason”. If a party has given notice that they wish to attend or be represented on the appeal and then seek an adjournment, a Committee may determine the appeal in their absence unless they are satisfied that there is good reason to grant an adjournment.

4. Difficulty in attending a hearing because of other commitments will not normally be “good reason”. However, if the relevant member of your personnel is involved in a trial on, or very close to, the appeal hearing date that will normally be good reason (unless you were aware of this commitment and the Committee considers that you should have contacted us earlier to agree a fresh date for the hearing of the appeal). Unexpected illness will normally be accepted as “good reason”, if supported by a medical certificate.

Rule 2.18 Basis of Assessments, Reviews and Appeals

Any Assessment made by the Regional Director under Rule 2.14, any appeal considered by the Costs Committee under Rule 2.16 and any application considered by the Costs Appeals Committee under Rule 2.17 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 in accordance with the requirements of the Contract and Guidance and of applying the remuneration rates set out in Annex A to the Contract Schedule. Allowance shall only be made for work claimed which is supported by appropriate evidence on the file at the time the claim was submitted.

1. Determining reasonableness will involve, in general terms, taking into account all the relevant circumstances of the case including the nature, importance, complexity or difficulty of the work and the time involved; and allowing a reasonable amount of time in respect of all Controlled Work actually and reasonably done in accordance with terms of this Contract (including in particular the Rules and Guidance in this Specification).

2. The relevant remuneration rates will then be applied to the time allowed and the resulting sum will be added to any disbursements allowed and to any VAT to produce a figure for the costs of the case. Allowance will not be made for work which was not evidenced on the file at the time the claim was made in the form of timed and dated attendance notes, and where appropriate by relevant documentation, such as copies of documentation drafted or perused.

Notice of amendment to Standard Terms from 1 October 2004

The first paragraph of Clause 16.19 (Interventions and Receivers) is amended as set out below

‘Interventions and Receivers

19. This Clause applies if there is an intervention in ~~you~~ your practice by your Relevant Professional Body (or by any other organisation that may lawfully do so) that has the effect of preventing you carrying out work under this Contract or if a receiver is appointed for you with a view to closing ~~you~~ your practice..... (etc).