

# Part D

## Narrative and Guidance

4D-001

### 1. Contract Guidance

#### 1.1 Criminal Defence Service General Criminal Contract Monthly Payment Rules 2002

##### Introduction

1. These Rules set out how the Commission will manage monthly payments made to firms under the General Criminal Contract.
2. ~~These Rules replace ones made in March 2001 and which applied during the first year of the General Criminal Contract. We are issuing these new Rules for two reasons:~~
  - (a) ~~the previous Rules provided for the particular complexities of the first year of the Contract, it is no longer necessary to have rules covering situations that only arose in that year;~~
  - (b) ~~to take account of the experience of operating monthly payments in the first year of the contract.~~

##### Objective

3. Our objective is to pay a sum per month which is as regular in amount as possible to ensure a smooth cash flow, and which provides offices with a continuing balance of payments in their favour. This balance will be between 5% and 10% of the annual value (past 12 months) of claims being submitted.

##### Submitting monthly returns (form CDS6)

4. The Contract requires monthly returns of Claims (for the majority of cases) on consolidated work report forms (CDS6). These have to be received by the Commission within 10 days of the end of each month. It is important to understand that the CDS6 need not include all work completed up to the date of submission: the Contract provides 3 months from the end of a case to submit the Claim (Contract Specification Part C, Rule 1.2).
5. Where a payment on account has been received on a case under pre-contract arrangements, any claim submitted in respect of that case must be net of such payment.

### **Submitting claims for non-standard fees (form CDS7)**

6. Claims in the Proceedings Class of Work for non-standard fees are not submitted on form CDS6 but on a case by case basis on form CDS7. These should not be submitted in a group, monthly, but individually, as soon as they are ready for submission.
7. Following assessment of CDS7 claims the assessed amount allowed is credited to the contracted office's account against the month in which it was entered onto SPOCC, the criminal contract payment computer system. The value of any CDS7 claim can only be taken into account by the Commission when reconciling claims and payments on a contracted office's account when it has been assessed and entered onto SPOCC. Claims for file reviews will be treated in the same way when submitted on the form FR1.

### **Reviews and reconciliation**

8. We will monitor the relationship between the value of Claims credited and the value of monthly payments being made.
9. When reviewing we will take the following approach. If the balance of payments in favour of the supplier is:
  - (a) greater than 10% of the annual value of claims being submitted, we will reduce payments;
  - (b) between 5% and 10% (inclusive) of the annual value of claims being submitted we will make no change; or
  - (c) less than 5% of the annual value of claims being submitted we will increase payments.
10. When making adjustments to the level of payments to be made as a result of such reviews we will aim to set the future level of monthly payments in order to bring the balance of payments in favour of the supplier into the 5% to 10% band. We will do this by resetting payments to provide a positive balance of 7.5%. (A series of illustrative examples are included in this Guidance at Annex A.) We will usually do this by resetting payments over the remaining part of the financial year to put the contract into the correct balance by the year end. However, we may, where appropriate, make a single adjustment followed by a reset rate of monthly payment.
11. In assessing the annual value of claims being submitted we will look at the most recent month for which claims have been submitted and entered onto SPOCC and the previous 11 months of claims data. However, we may look over a shorter period where appropriate including:
  - (a) if there was a very low, unrepresentative, rate of claim in the first few months of contracting we may not take these months into account;
  - (b) if there has been a very clear, step, change in the rate of claim during the 12 month period, either up or down, which has established a new running rate of claim.

12. In addition, under other Contract powers, we may suspend or reduce monthly payments:
  - (a) if we suspend or terminate the contract in accordance with the provisions of the Contract Standard Terms or apply any other contract sanction affecting payment;
  - (b) if the necessary monthly returns are not submitted by the contracted office (see paragraph 4 above).
13. In the first of these circumstances we may seek immediate recoupment of the balance of any monies owing if justified under the Contract. In any of these circumstances we will notify the firm concerned in writing of our decision and setting out the reasons for it. A firm subject to such a decision may seek a review of it in accordance with the provisions of the Contract and these Rules.

#### **Requests by firms for increased monthly payments**

14. A contracted office may contact the Commission at any time to discuss adjustments to their monthly payments and apply to reduce or increase them. The circumstances where the Commission may increase the monthly payments will be on receipt of a written application on the grounds that the balance of payments in favour of the supplier is less than 5% of the annual value of claims being submitted.
15. We will make a decision in respect of an application for a review within 21 days of a written application being received. We will make a decision on the application in accordance with the provisions of the Contract and these Rules. The firm seeking a review will be notified of the decision and reasons in writing. Any amendment to the level of monthly payments will normally be made at the point of the next monthly payment following the review decision.

#### **Disbursements**

16. In addition, the Contract provides (Contract Specification Part B Rule 5.3) for the one-off payment on account of single disbursements where the disbursement in question is at a level wholly disproportionate to a firms' normal level of payments for this work. This is designed to be an exceptional additional mechanism, used rarely, possibly for small firms which may, on occasion, be faced with a disbursement in a particular case which is very large in comparison with their normal rate of legal aid payments. This mechanism is not intended to be the normal route for the payment of disbursements as these, as explained above, are addressed through the monthly payment system.

#### **New firms**

17. Where a new firm is established to undertake criminal defence work the firm should approach the Commission as soon as practicable to discuss the necessary arrangements. New firms will be offered a one-year Contract to undertake CDS work provided that they have a supervisor who meets the SQM supervisor standard and have developed systems and procedures sufficient to pass a Desktop audit of their documentation.
18. As a part of this process we will seek to settle the level of monthly payments as soon as practicable in this set-up phase so that the new firm can have confidence as to the CDS payments it will receive in the first

year of operation (provided it performs in accordance with the Contract rules and undertakes the predicted volume of business).

19. We will set the monthly payments at a level which provides a smooth, consistent, rate of payment throughout the first year but which will be adjusted during the latter part of the year in accordance with the reconciliation rules set out above. As a new firm's profile of work is likely to show an increase from a relatively low level, this approach will provide cash flow advantages to firms establishing a new business.
20. The actual level of payments will vary from new firm to new firm and depend on factors such as location, size and, importantly, whether the members of the firm are starting with an established base of clients. In determining the level of payments we will, in particular, take account of the firm's business plan, existing information on the volumes of work currently being undertaken by members of the new firm (this will be particularly relevant if, for example, the new firm consists of a complete department from an existing contracted supplier) and information the Commission will hold on the value of work generally being undertaken by similarly sized firms in the same area.

#### **Payment method**

21. All payments will be made by BACS.
22. The Commission is content for these payments to be paid directly to the office account in accordance with the Law Society's interim guidance.

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#### **Annex A Criminal defence service general criminal contract monthly payment rules 2002 – examples**

##### **Example A**

Firm A has claimed £10,000 a month throughout year one, a total of £120,000.

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In year one it has received payments of £11,000 a month, a total of £132,000.

Positive cash balance in favour of the firm of 10%.

If the firm continues to bill at only £10,000 a month at the beginning of year two the Commission will reduce the monthly payment as it has already built up the maximum level of positive cash balance to which it is entitled, i.e. between 5% and 10% of the annualised value of the claims being submitted.

The approach will be to drop payments to the running rate of claiming, i.e. £10,000 per month.

##### **Example B**

By the end of September 2002 (18 months into the contract) Firm B has claimed £150,000 (£5,000 a month for the first six months, £10,000 a month for the most recent 12 months).

It has been paid a total of £150,000 and is currently being paid £8,000 a month.

It has no current positive cash balance.

The annual value of its current claim rate is £120,000 so it should have a positive cash balance of between £6,000 and £12,000.

By the end of year two of the contract, assuming the current rate of claim continues at £10,000 a month, the firm will have billed £210,000. We will need to have paid between £216,000 and £222,000.

Therefore, in resetting the monthly payments we will aim to have paid £219,00 by year end.

This means there is £69,000 to pay over six months which results in a new monthly payment of £11,500 a month.

### **Example C**

By the end of September 2002 (18 months into the contract) Firm B has claimed £156,000 (£10,000 a month for the first 6 months, £8,000 a month for the most recent 12 months).

It has been paid a total of £180,000 and is currently being paid £10,000 a month.

It has positive cash balance of £24,000.

The annual value of its current claim rate is £96,000 so it should have a positive cash balance of between £4,800 and £9,600.

By the end of year two of the contract, assuming the current rate of claim continues at £8,000 a month, the firm will have billed £204,000. We will need to have paid between £208,800 and £213,600.

Therefore, in resetting the monthly payments we will aim to have paid £211,200 by year end.

This means there is £31,200 to pay over six months which results in a new monthly payment of £5,200 a month.