

## VERY HIGH COST CASE (CRIME) PANEL

### ~~DRAFT~~ CONTRACT ANNEXES FOR PANEL MEMBERS

ANNEX NO.	ANNEX DESCRIPTION	PAGE
1	<del>TENDER DOCUMENTATION</del> <u>SELECTION CRITERIA FROM THE TENDERING EXERCISE</u>	2
2	KEY MEMBERS OF YOUR DEFENCE TEAM BY CATEGORY	3
3	PANEL MEMBER'S OFFICE ADDRESS(ES)	5
4	VHCC CONTRACTING PROCESS TIMETABLE	6
5	CATEGORY CRITERIA	15
6	BEST VALUE PROTOCOL	18
7	RATES OF PAY	32
8	PAYMENT AND DISBURSEMENTS	34
9	INSTRUCTING ADVOCATES	39
10	INSTRUCTING EXPERTS	43
11	KEY CONTACTS	44
12	PEER REVIEW PROCESS	45
13	BREACHES OF CONTRACT	46
14	VHCC APPEALS COMMITTEE	51
15	COMPLAINTS	57
16	CONTRACT AMENDMENT NOTICE	60
17	TUPE	61
18	EXTRACTS FROM THE GENERAL CRIMINAL CONTRACT APPLICABLE TO VHCC WORK	62

19	QUALITY STANDARDS: SPECIALIST QUALITY MARK	63
----	--	----

## ANNEX 1

### TENDER DOCUMENTATIONSELECTION CRITERIA FROM THE TENDERING EXERCISE

A copy of the Selection Criteria from the tender exercise is contained in the Information for Applicants document which can be downloaded from our website at [www.legalservices.gov.uk](http://www.legalservices.gov.uk).

~~[The Defence Team's tender documentation will be added here]~~

## ANNEX 2

### KEY MEMBERS OF YOUR DEFENCE TEAM BY CATEGORY

1.1 As part of your tender, you submitted details of the Key Members of your Defence Team - i.e. Level A Litigators, Level B Litigators and Advocates, including Panel Advocates (everyone on the Defence Team apart from Level C fee earners or pupils). These details are included in this Annex.

#### 1.2 Levels of Litigator

##### 1.2.1 Level A Litigator (including Level A solicitor-advocates)

A 'Level A' Litigator must:

- (a) be a solicitor/ solicitor-advocate or employed Barrister; and
- (b) have 8 years' post-qualification experience; and
- (c) either:
  - (i) during the last three years, have conducted a total of 1,050 hours of working on other Serious Crime Cases; or
  - (ii) in any two of the last three years, have conducted a total of 700 hours working on other Serious Crime Cases; or
  - (iii) have a particular specialism that is relevant and important to the case; or
  - (iv) have a combination of (c)(i) and (c)(iii), or (c)(ii) and (c)(iii).

For (c) (i) and (c)(ii) above, evidence that these hours have been met (by way of Billing Guides) must be provided to the CCU upon request.

##### 1.2.2 Level B Litigator (including Level B solicitor-advocates)

A 'Level B' Litigator must:

- (a) be a solicitor/ solicitor-advocate or employed Barrister; or
- (b) be a Fellow of the Institute of Legal Executives; or
- (c) have substantial knowledge and experience of criminal defence casework. Generally this would be expected to include ten years' experience of criminal defence casework and some experience of serious and complex criminal cases.

##### 1.2.3 Level C fee-earner

A 'Level C' fee-earner must:

- (a) be a trainee solicitor; or
- (b) be a pupil barrister; or
- (c) be a legal executive (although note the criteria for a Level B Litigator above); or
- (d) be any other person conducting fee-earning work.



**ANNEX 3**

**PANEL MEMBER'S OFFICE ADDRESS(ES)**

<b>Name of Panel Member</b>	
<b>Address of main office</b>	
<b>Address(es) of any linked office(s)</b>	

## ANNEX 4

### VHCC CONTRACTING PROCESS TIMETABLE

- 1.1 Extensions to the deadlines imposed in this Annex may be granted by agreement between the Defence Team's Case Manager and the CCU's Contract Manager.
- 1.2 Where the Defence Team is required to submit written documentation to the CCU, all documents must be typed unless otherwise agreed with the Contract Manager. Submission of handwritten documents may result in a delay to the process.
- 1.3 Template documents referred to in this Annex will be provided to Panel Members and Panel Advocates (as members of the Defence Team) by the CCU – e.g. the VHCC Notification Request Form, Case Plan, Task List and Case Category Assessment Sheet.

<b>1.4 NOTIFICATION and CONTRACTING DECISION</b>	
1.	The Defence Team must continually review the nature and status of a case in light of the likely duration of the case at trial. The Defence Team must notify the CCU by submitting a VHCC Notification Request Form as soon as it appears that the case will be, or is likely to be, a VHCC and, in any event, within five working days of the sooner of (a) the Plea and Case Management Hearing or (b) the Defence Team having identified that the case will be or is likely to be a VHCC.
2.	The CCU will decide whether the case is a VHCC within ten working days of receipt of a completed VHCC Notification Request Form and any other supporting documentation.
3.	The CCU will send a Contract Decision Letter to the Defence Team stating (a) its decision, (b) the reasons for that decision, and (c) if contracted, the name of the Contract Manager - within two working days of decision being made.

## 1.5 CASE PLANNING

1.	The Defence Team must nominate a Case Manager to have overall responsibility for the VHCC and to liaise with the CCU's nominated Contract Manager.
2.	<p>The Defence Team must prepare a Case Plan, Case Category Assessment Sheet and Stage 1 Task List and submit to the CCU no later than ten working days from the date of the Contract Decision Letter.</p> <p>Case Plan, Case Category Assessment Sheets and Task List templates will be provided to Defence Teams by the CCU. All submissions must be made using these templates. Submission of these documents in any other format will not be accepted by the CCU.</p> <p>The Case Plan and Task List must reflect all the necessary work of that Defence Team for that stage.</p> <p>All members of the Defence Team must reach agreement on the content of each Task List prior to submission to the Contract Manager for authorisation.</p> <p>The Defence Team must also (as part of the Task List) provide a summary of the work undertaken in the previous stage (Stage 0).</p> <p>The Case Plan and Task List must be signed by the Case Manager.</p> <p>The category of a VHCC can be reviewed at the start of each stage of a VHCC. Please see the General Notes on Category Criteria at Annex [5].</p>

## 1.6 NEGOTIATION MEETINGS

1.	<p>If a meeting is appropriate, the Contract Manager will contact the Case Manager within two working days of receiving a fully completed Case Plan, Case Category Assessment Sheet and Stage 1 Task List to arrange a Stage 1 meeting.</p>
2.	<p>If a meeting is appropriate, the Stage 1 meeting will take place within ten working days of receipt of the completed Case Plan, Case Category Assessment Sheet and Stage 1 Task List. The meeting will take place at the offices of the Case Manager. Where this is not possible, the meetings will take place at a mutually agreed location. The meetings will be attended by the Case Manager and the Contract Manager. The CCU will reimburse the Case Manager for attending the meeting according to the rates of pay set out in Annex [7]. Any other Defence Team members may attend if they wish, but the CCU will not reimburse them for their attendance.</p> <p>At this meeting, the Case Manager and Contract Manager will negotiate the items on the Task List and the category of case.</p> <p>VHCC Work undertaken prior to the Stage 1 meeting will be deemed Stage 0 work.</p>
3.	<p>After considering your proposals and negotiating with you if necessary on these proposals, we will request an updated Task List from you, specifying the VHCC Work to be done and the hours for each fee-earner and Advocate.</p> <p>If so requested, the Defence Team will update the Stage 1 Task List reflecting the tasks and hours agreed during the Stage 1 meeting and resubmit this to the CCU within two working days of the Stage 1 meeting.</p>
4.	<p>The CCU will check the updated Stage 1 Task List and, if accurate, the CCU will sign-off the documents and confirm sign-off to the Defence Team within two working days of receipt of the completed Stage 1 Task List.</p> <p>Only once such a document has been received and signed by both parties (the Case Manager on behalf of the Defence Team and the Contract Manager) will the hours for Stage 1 be deemed to be agreed.</p>

<b>1.7 DURING STAGES</b>	
1.	You must regularly review and, if necessary, notify us of any changes to the VHCC Work required.
2.	<p>The Defence Team will make all requests for amendments to the tasks or hours to the CCU.</p> <p>Where the amendment request relates to extending the time already agreed on an existing task on the current Task List, the request must be made to the CCU prior to the expiry of the agreed hours for that task.</p> <p>Where the amendment request relates to a new task not listed on the current Task List, the request must be made to the CCU prior to any work commencing on that task.</p> <p>Requests for amendments to the Task List (including an extension of a task) can be made orally or in writing. Where a request is made orally, the Defence Team must record such an amendment in writing and keep that record on file. Depending on the nature and extent of the change, a Contract Manager may request the Defence Team to update the current Task List and submit it to the CCU.</p> <p>The Case Manager must ensure that all those involved in the VHCC are aware of what VHCC Work is now required, by whom and by when, and that they know where the latest version of what is to be done (i.e. the most current Task List) is recorded.</p>
3.	<p>The CCU (not necessarily the Contract Manager with conduct of the VHCC) will respond to any such requests within two working days of receipt of the request. Further information may be sought by the CCU in order for it to respond fully.</p> <p>Any amendments made in writing, whether in the form of a new or updated Task List or otherwise, must be approved by the CCU in the usual manner.</p>
4.	The Defence Team will update the current Task List with any amendments made. Defence Teams are not confined to a deadline for this task. Defence Teams are encouraged, however, to amend the Task List contemporaneously following an agreed amendment.

## 1.8 AT STAGE END – FUTURE STAGE PLANNING

1.	<p>The Defence Team must prepare a Task List for the next stage and submit this to the CCU no later than ten working days before the stage end date (i.e. the end date of the previous stage) for consideration.</p> <p>Task Lists must be submitted to the CCU in advance of any stage negotiation meetings with the CCU.</p> <p>At the same time, the Defence Team must also provide a summary of the VHCC Work undertaken in the previous stage.</p> <p>The Case Plan and Task List must be signed by the Case Manager.</p>
2.	<p>If a meeting is required, the Contract Manager will contact the Case Manager within two working days of receiving a fully completed Task List to arrange a meeting.</p>
3.	<p>If a meeting is required, it will take place within ten working days of receipt of the completed Task List and therefore no later than the stage end date.</p>
4.	<p>After considering your proposals and negotiating with you if necessary on these proposals, we will request an updated Task List from you, specifying the VHCC Work to be done and the hours for each fee-earner and Advocate.</p> <p>If so requested, the Defence Team will update the Task List reflecting the tasks and hours agreed during the meeting and will resubmit this to the CCU within two working days of the meeting.</p>

5.	<p>The CCU will check the updated Task List and, if accurate, the CCU will sign-off the documents and confirm sign-off to the Defence Team within two working days of receipt of the updated Task List.</p> <p>Only once such a document has been received and signed by both parties (the Case Manager on behalf of the Defence Team and the Contract Manager) will the hours for Stage 2 be deemed to be agreed.</p>
----	--

### 1.9 STAGE 0 AUDIT

Stage 0 work (work performed from the date the Representation Order was granted until the date first covered by your first proposed Task List) ~~that has not been assessed before the Panel Start Date\_~~ will also be audited by us and is also payable at the Contract rates (set out in Annex [7]).

Should the CCU require further information, we will, in the first instance, assess the attendance notes or work logs provided, ~~request further~~ information on specific items (briefs to counsel, advices, other work products) to support the summary of hours worked.

1.	<p>The Defence Team will prepare a Stage 0 Audit Bundle and submit this to the CCU within 20 working days of the Stage 1 start date for assessment.</p> <p>To enable us to perform an audit of Stage 0 work, you must make available to us (or, at our request, send to us) the following documents:</p> <ul style="list-style-type: none"> <li>- all attendance notes (Panel Members) or work logs (Advocates, including Panel Advocates), with supporting documentation (i.e. schedules produced and notes taken); and</li> <li>- a summary of hours worked.</li> </ul> <p>Audit Bundles must be submitted in this format. If your Audit Bundle is not submitted in this format, it will be returned and no payment will be made for your claim.</p>
----	--

2.	If the Audit Bundle is submitted in the format as set out above, the CCU will assess the Audit Bundle and complete its assessment within 20 working days of receipt of the Audit Bundle. If further information is required, the CCU will request such information and may return the Audit Bundle with such a request.
3.	Provided the assessment has been made, the CCU will send to the Defence Team its assessment report and the necessary forms for signature within 20 working days of receipt of the Audit Bundle.
4.	<p>If the Defence Team agrees with the assessment made by the CCU, the payment form should be signed and returned to the CCU within ten working days of the date on the assessment report.</p> <p>If the Defence Team disagrees with any part of the assessment made by the CCU, it should submit written appeal representations to the CCU. For further information on the appeals process please refer to Annex [14].</p> <p>If you submit an appeal on any part of the assessment, the remaining parts of the assessment will be considered to be agreed. No payment will be made for the part of the assessment in dispute. Payment will be made for the part(s) of the assessment not in dispute.</p>
5.	The payment will be processed in time to meet a settlement run deadline. In order to do so, the signed payment form must be received by the CCU no later than one working day prior to the corresponding settlement run deadline.

## 1.10 AT STAGE END – CLAIMING

The CCU will not pay for any VHCC Work that is not specified in a Task List, except where permitted by this Contract.

1. The Defence Team must update the Task List for that stage and reconcile the hours worked against the hours agreed and submit this to the CCU as part of the Audit Bundle.

The Audit Bundle must be submitted to the CCU within 20 working days of the stage end date.

The Audit Bundle must contain the following documents:

- an updated Task List for that stage detailing all amendments agreed throughout the stage;
- a summary of hours worked against each item (either as a separate document or as part of the updated Task List); and
- attendance notes or work logs relating to the stage.

Attendance notes and work logs must hold the following information:

- date;
- time of day;
- name and level of fee earner (or Advocate's role);
- task number;
- comprehensive description of VHCC Work completed; and
- total hours.

Audit Bundles must be submitted in this format. If your Audit Bundle is not submitted in this format, it will be returned and no payment will be made for this claim. Any delay resulting from an insufficient audit submission is likely to cause a delay to any audit assessment to be undertaken and any payment that may follow.

For trial stages, the CCU will request the trial log from the court. Whilst the CCU will make every effort to obtain such information, the expediency of the Court in responding to requests may delay the auditing process. Any such delay will be communicated to the Defence Team.

2.	If the Audit Bundle is submitted in the format as set out above, the CCU will assess the Audit Bundle and complete its assessment within 20 working days of receipt of the Audit Bundle. If further information is required, the CCU will request such information and may return the Audit Bundle with such a request.
3.	Provided the assessment has been made, the CCU will send to the Defence Team its assessment report and the necessary forms for signature within 20 working days of receipt of the Audit Bundle.
4.	<p>If the Defence Team agrees with the assessment made by the CCU, the payment form should be signed and returned to the CCU within ten working days of the date on the assessment report.</p> <p>If the Defence Team disagrees with any part of the assessment made by the CCU, it should submit written appeal representations to the CCU. For further information on the appeals process please refer to Annex [14].</p> <p>If you submit an appeal on any part of the assessment, the remaining parts of the assessment will be considered to be agreed. No payment will be made for the part of the assessment in dispute. Payment will be made for the part(s) of the assessment not in dispute.</p>
5.	The payment will be processed in time to meet a settlement run deadline. In order to do so, the signed payment form must be received by the CCU no later than one working day prior to the corresponding settlement run deadline.

## ANNEX 5

### CATEGORY CRITERIA

#### 1. General notes

1.1 In relation to the categorisation of cases in both fraud and non-fraud cases, there are a number of important points to note outside of the Block A and Block B criteria:

1.1.1 The CCU shall decide whether a case is a fraud VHCC or a non-fraud VHCC and which category that case it falls into.

1.1.2 Defence Teams will use the Case Category Assessment Sheet to provide their full and detailed representations on the category of case. A template Case Category Assessment Sheet will be issued to Panel Members and Panel Advocates. The CCU will consider representations in this format only.

1.1.3 The category of the case is assessed against the criteria set out below and discussed at the first negotiation meeting. The CCU is only able to assess the Category Criteria against the evidence provided at that date.

The assessment of category will be based on information that the Defence Team and the prosecution can confirm as current fact, not what might happen at some time in the future.

A different category may apply at different stages of a VHCC - for example, the prosecution may present more evidence than expected, or may drop one of a number of charges.

1.1.4 The Defence Team and/or the CCU may review the category of a VHCC at the start of any stage when the CCU considers a Task List. If the CCU agrees to amend the category, the date on which the re-categorisation applies is the date on which the request for a re-categorisation is made (either by the Defence Team or the CCU). A request for re-categorisation must be made using the Case Category Assessment Sheet, which should include full and detailed representations on category.

1.1.5 Circumstances may will arise where co-defendants within the same VHCC will be assigned different categories in order to reflect each defendant's involvement in the VHCC.

A Defence Team will need to demonstrate that their defendant's VHCC is able to meet the relevant criteria and provide supporting evidence for each criterion they believe the VHCC satisfies.

1.1.6 Evidence that is submitted in support of one criterion cannot be used to support submissions for meeting the requirements of a second criterion.

## **2. Criteria for setting hourly rates for fraud VHCCs**

### **2.1 Block A**

1. The defendant's case is likely to give rise to:
  - (a) national publicity; and
  - (b) widespread public concern;
2. the defendant's case requires highly specialised knowledge;
3. the defendant's case involves a significant international dimension;
4. the defendant's case requires legal, accountancy and investigative skills to be brought together.

### **2.2 Block B**

1. The value of the fraud as described in the indictment and/or the prosecution case statement/summary exceeds:
  - a) £10m
  - b) £2m
2. The volume of prosecution documentation, which consists of:
  - witness statements
  - exhibits
  - interview transcripts
  - pre-interview disclosure/advance information
  - Notices of Further Evidence ("NFEs")exceeds:
  - a) 30,000 pages
  - b) 10,000 pages.

Unused material will not be considered for the purposes of this criterion, nor will evidence which has yet to be served.
3. The total costs of representing the defendant(s) are likely to exceed:
  - a) £500,000
  - b) £250,000.
4. The length of the trial is estimated at:
  - a) over 3 months

### **2.3 Categorisation of cases**

- Category 1: all 4 criteria from Block A are met, and all 4 a's from Block B.
- Category 2: 2 criteria from Block A are met and at least 2 a's or b's from Block B.
- Category 3: All other fraud VHCCs.
- Category 4: non-fraud VHCCs only.

### **3. Criteria for setting hourly rates for non-fraud VHCCs**

#### **3.1 Block A**

1. Pursuant to statute, the case must be a class 1 or 2 offence.
2. The maximum sentence for the offence is imprisonment for life or over 30 years, per statute.
3. The case is likely to attract national interest.
4.
  - a) Where the offence is of a violent or sexual nature, there must be multiple victims;
  - b) if the offence is of a violent or sexual nature and there is only a sole victim, there must be something significant about the crime;
  - c) if the case involves drugs, their total value is estimated by the prosecuting authority to exceed £10m;
  - d) the case in which the main offence with which the defendant is charged, whether at common law or under any statutory enactment, is primarily founded on allegations of terrorism as defined in the Terrorism Act 2000.

#### **3.2 Block B**

1. The volume of prosecution documentation, which consists of:
  - witness statements
  - exhibits
  - interview transcripts
  - pre-interview disclosure/advance information
  - Notices of Further Evidence (“NFEs”)exceeds:
  - a) 10,000 pages
  - b) 5,000 pagesUnused material will not be considered for the purposes of this criterion, nor will evidence which has yet to be served.
2. The total costs of representing the defendant(s) are likely to exceed:
  - a) £400,000
  - b) £200,000

#### **3.3 Categorisation of cases**

- Category 1: Terrorism cases uplifted from category 2.
- Category 2: For cases not involving drugs:  
All 4 criteria from Block A are met and 2 a’s from Block B; OR  
For serious drugs cases:  
3 criteria from Block A and 2 a’s from Block B.
- Category 3: 3 criteria from Block A are met and at least 1 a or b from Block B.
- Category 4: All other VHCCs.
- If the case is primarily founded on allegations of terrorism, apply an uplift of one category.

## ANNEX 6

### BEST VALUE PROTOCOL

#### 1. Introduction

- 1.1 Lord Carter's report on the review of legal aid procurement made a number of recommendations directly concerning VHCCs.
- 1.2 Recommendation 4.22 of the report stated that designing a Best Value Protocol was critical to embedding best practice in VHCCs. The aim of this Protocol is to set out best practice for case preparation.
- 1.3 The Best Value Protocol ("the Protocol") has been formulated through joint consultation between the LSC, the Law Society, the Bar Council and individual lawyers.
- 1.4 The Protocol operates alongside and, as far as is reasonably possible, supports the following:
- The Lord Chief Justice's Heavy Fraud and Complex Case Protocol<sup>1</sup>;
  - The Attorney General's guidelines on disclosure<sup>2</sup>;
  - The Criminal Procedure Rules<sup>3</sup>; and
  - All other relevant and updated guidelines.
- 1.5 The Protocol is an Annex to this Contract. By signing the Contract, the parties confirm acceptance of the principles set out within this Protocol.
- 1.6 The Protocol is a Contract document and must be adhered to, ~~unless you have agreed otherwise in writing with your Contract Manager~~ – i.e. the Protocol is not simply a guide to best practice when carrying out VHCC Work; it is a binding document that must be followed. If there are particular features of an individual VHCC which make it unsuitable for certain parts of the Protocol to be applied to it, we and the Panel Member may agree in writing to disapply these parts in relation to that individual VHCC only. ~~, except where it has been varied by agreement in writing by both parties. A Panel Member wishing to vary any element of the Protocol must make representations to the Contract Manager as part of their stage negotiations. Any agreed variations to the Protocol will apply only to the individual VHCC in respect of which the variation has been agreed.~~
- 1.7 We will monitor your performance against the Protocol.

• \_\_\_\_\_

<sup>1</sup> "Control and Management of Heavy Fraud and Other Complex Criminal Cases – A Protocol issued by the Lord Chief Justice of England and Wales – 22 March 2005": [http://www.judiciary.gov.uk/docs/control\\_and\\_management\\_of\\_heavy\\_fraud\\_and\\_other\\_complex\\_criminal\\_cases\\_1803.pdf](http://www.judiciary.gov.uk/docs/control_and_management_of_heavy_fraud_and_other_complex_criminal_cases_1803.pdf)

<sup>2</sup> [http://cps.gov.uk/legal/section20/chapter\\_c.html](http://cps.gov.uk/legal/section20/chapter_c.html)

<sup>3</sup> 2005 No. 384 (L.4) Supreme Court of England and Wales – Magistrates' Courts, England and Wales - The Criminal Procedure Rules 2005: <http://www.opsi.gov.uk/SI/si2005/20050384.htm>

~~1.8 This Protocol is a “living document” and we may therefore amend it when it is considered appropriate to ensure that it continues to achieve its objective. Please refer to Clause [30].~~

1.98 The following sets out the key principles and working practices of what we deem to be the “best value Defence Team”.

1.940 This Protocol does not in any way operate as a ‘blueprint’ for Defence Teams detailing the correct approach to conducting a VHCC.

1.140 Negotiations between the Defence Team and the nominated Contract Manager will still be required. However, this Protocol will offer clear direction to those involved in VHCCs describing alternative ways of working derived from experienced VHCC practitioners and the CCU.

1.112 The CCU will expect all Panel Members to achieve the standards of the most efficient Panel Members.

1.123 Case preparation is contingent upon the effective operation of other agencies. Quality and efficiency of case preparation can be affected and driven by the form in which the evidence is served.

## **2. Phase 1: Case planning**

### **2.1 Early identification of key issues**

2.1.1 An essential part of effective case planning and preparation is the early identification of the key issues in the case.

#### **2.1.2 Case planning conference**

2.1.2.1 Based on the information held at the time, the Defence Team should endeavour to work together to identify the key issues in the VHCC at the earliest opportunity. An effective method of doing so is to hold a case planning conference.

2.1.2.2 All members of the Defence Team would normally be expected to take part in at least the first conference and make the following decisions:

- Nominate a Case Manager;
- Discuss the case against the client(s) based on the information held at that time and identify, where possible, the key issues in the case;
- Discuss the work to be undertaken in line with those key issues; and
- Formulate a “Case Plan” (which will incorporate the key issues of the case) and “Stage 1 Task List” for submission to the nominated Contract Manager.

2.1.2.3 The Defence Team may consider it appropriate to invite the Contract Manager to such a conference in order to discuss the key issues in the case.

#### **2.1.3 Case Manager**

2.1.3.1 A Defence Team will nominate a Case Manager. The Case Manager should be either:

- a supervising Litigator or the main fee earner (minimum Level B) in the case; or
- Leading Advocate (or Advocate if junior alone).

2.1.3.2 The Case Manager will act as a representative for the Defence Team and will be responsible for the efficient running of the Contract. He/she will also be responsible, in conjunction with the Lead Advocate (if different), for the overall conduct of the defence case. The Case Manager, together with the Lead Advocate, would normally be expected to lead the Defence Team in planning the VHCC in line with the key issues identified.

2.1.3.3 The Case Manager will also be responsible for liaison with the nominated Contract Manager. Unless there are exceptional circumstances to justify attendance by additional Defence Team members, only the Case Manager should attend negotiation meetings and will be responsible for negotiating the hours for all work proposed in the Task List.

#### 2.1.4 Case planning

2.1.4.1 When planning the VHCC, the Defence Team would ordinarily be expected to consider the following:

- Is the work payable under the Contract?
- Is the task being proposed fee earner work?
- Is the task necessary to further prepare the Defence Case?
- If the task is necessary, should it be undertaken at this stage?
- What level of fee earner should undertake the work?
- How many hours are reasonable to undertake the work?

2.1.4.2 In all circumstances, the Defence Team should endeavour to plan its case in the context of its client's instructions and focus on the key issues in its client's case.

#### 2.1.5 Conspiracy / joint charges

2.1.5.1 Contract Managers will work with the Defence Team to understand the relationship between the defendants in order to assist in their assessment of the time requested.

2.1.5.2 The Defence Team might want to consider conducting regular case planning meetings in order to discuss new evidence and the required approach.

## 2.2 **Advocates**

2.2.1 One crucial element of case planning and preparation is the effective timing of instructing Advocates.

2.2.2 A Defence Team would normally be expected to:

- **i**nstruct Advocates within 14 days of the Representation Order granting the appropriate authority; and
- **i**nvolve instructed Advocates in initial case planning meetings to set out the approach to preparing the defence case.

- 2.2.3 When planning the VHCC, the Defence Team should work together to decide on the roles of leading and junior Advocates where there are two Advocates instructed. It would not normally be considered reasonable for the junior Advocate to duplicate the work of the Leading Advocate in order to act as a substitute for the Leading Advocate in his/her absence.
- 2.2.4 The Defence Team should not allocate the same task to both Advocates except for reading of primary material-served evidence or unless it is considered appropriate to do so in order to further the preparation of the defence case.
- 2.2.5 When considering the instruction of a second Advocate, the Defence Team should notify the Contract Manager as soon as possible.
- 2.2.6 The Defence Team would normally be expected to consider the following options when determining the need to instruct a second Advocate:
- Continue with junior alone;
  - Apply for:
    - o Two junior Advocates;
    - o QC alone; or
    - o QC and junior Advocate.
- 2.2.7 Where the Representation Order authorises the instruction of two Advocates, the Defence Team should take all reasonable steps to keep the position under review, in accordance with the Regulations.
- 2.2.8 The Defence Team would normally be expected to apply to amend the Representation Order where two Advocates are no longer needed in the case. For example, in some cases, there may only be a need to instruct one Advocate for the confiscation or sentencing stage.
- 2.2.9 Where the Representation Order grants authority for two Advocates, the Defence Team may wish to consider whether both Advocates are required to attend court for all hearings. The Case Manager and Leading Advocate should endeavour to work together to determine who would be most appropriate to attend hearings.
- 2.2.10 The Defence Team may wish to consider the instruction of pupils (supervised) or second juniors on VHCCs where the type or amount of work justifies the need.
- 2.2.11 Depending upon the nature and complexity of the VHCC, the CCU may consider requests for a second Advocate and, if it is deemed appropriate, may submit comments to the court for their consideration.

### **2.3 Multiple defendants**

- 2.3.1 When accepting instructions from more than one defendant in a VHCC, the Defence Team should consider their position in relation to potential conflict and duplication, in accordance with their professional codes of conduct. Please see Clause 10 for further information.
- 2.3.2 When representing more than one defendant, the Defence Team will be required, at the outset, to provide in writing to the Contract Manager, a

statement confirming that having reviewed each client's position, there is no conflict and that they cannot foresee the potential of a conflict arising in the light of such information as is known at that time to the Defence Team.

2.3.3 As the VHCC progresses, the Defence Team will be expected to review the position of each client and confirm to the Contract Manager at each stage meeting that no such conflict exists.

2.3.4 The Defence Team should make every effort to eliminate unnecessary duplication when representing more than one defendant. For example, representing two defendants does not automatically result in each defendant being represented by a separate fee earner.

## 2.4 Selection and instruction of experts

2.4.1 The Defence Team would normally be expected to consider, at the outset of the case, the need to instruct experts and should endeavour to keep the position under review throughout the case. The Case Manager should notify the Contract Manager of the potential need to instruct an expert on a particular matter at the earliest possible opportunity.

2.4.2 Where the prosecution have served expert evidence, the Defence Team would ordinarily be expected to discuss any likely areas of contention with the Contract Manager.

2.4.3 In cases where expert advice is necessary the Defence Team should endeavour to:

- ~~f~~Focus on the work required~~;~~
- ~~p~~Particularise the issues on which expert advice is sought;
- ~~d~~Draft initial instructions to the expert on the work for which he/she is invited to quote and issue such instructions to three selected experts. The Defence Team should use any advice on expert evidence produced by counsel to form the initial instructions~~;~~
- ~~I~~Instructions should, as far as is reasonably possible, request a quote for all work to be undertaken. If it is considered more appropriate to request a quote on a part-by-part basis the Defence Team should discuss this approach with the Contract Manager~~;~~
- ~~o~~Obtain three independent quotations for the proposed work~~;~~
- ~~s~~Submit all three quotations to the Contract Manager with a covering note indicating the views of the Defence Team of the quotes in general and their favoured expert~~;~~
- ~~The Case Manager should endeavour to~~ negotiate the details of the quote with the selected expert in order to meet the LSC requirements~~;~~
- ~~The Case Manager would normally be expected to~~ continue to working with the expert to ensure they are working within the boundary of instructions and should request further funding as is deemed necessary from the Contract Manager~~;~~
- ~~U~~Upon completion of work and submission of an invoice from the expert, ~~the Case Manager would normally be expected to~~ ensure that all work claimed is within the hours (item by item) agreed and that the hourly rate corresponds with that which was agreed at the outset~~;~~ and
- ~~U~~Unless the invoice is of a significant value, ~~the Panel Member should~~ submit the invoice as a disbursement with their Panel Member's audit

bundle at the end of the current stage. (Invoices of significant value may be submitted independently and paid as non-stage specific.)

- ~~Invoices of significant value may be submitted independently and paid as non-stage specific.~~

2.4.4 Please refer to the list of CCU guideline expert rates for use by Defence Teams when requesting quotes and selecting experts.

2.4.5 Upon receipt of a quotation from a Panel Member requesting authority to instruct an expert, the Contract Manager may consult other LSC departments to help determine whether the work and time requested is reasonable and necessary.

2.4.6 The Defence Team should take all reasonable steps to not put themselves in the position where late consideration of the need for experts has an impact on the cost of preparing the defence case.

## **2.5 Sharing of costs with co-defendant's legal team**

2.5.1 The product of certain types of work may be of use to more than one Defence Team. Examples of the types of work might include:

- Document translation of parts of the served evidence; and
- Court transcripts for hearings and trials.

2.5.2 When determining the need to conduct certain types of work, the Defence Team should also take the view that the product of such work will be shared with other teams unless there are circumstances not to share such work (i.e. conflict).

2.5.3 In situations where there is a conflict of interest between defendants, each Defence Team would still be expected to work with their Contract Manager to consider ways by which costs might still be shared.

2.5.4 The Defence Teams should be aware that the CCU does not have authority to instruct experts. In a situation whereby a joint expert is instructed, one Defence Team should be nominated to instruct the selected expert. The same Defence Team would normally be expected to liaise with that expert.

2.5.5 The Case Manager and Contract Manager should not permit inflated hourly rates on the basis that the expert is providing a service for more than one defendant. Any additional time required must be reasonable and necessary and should be addressed in the expert's estimated completion time.

## **3. Phase 2: Case preparation**

3.1 Case preparation is contingent upon the effective operation of other agencies. The quality and efficiency of case preparation can be affected and driven by the form in which the evidence is served.

### **3.2 Categories of evidence**

3.2.1 Categorising evidence is a key part of case planning in order to decide the most efficient and effective way of approaching served prosecution evidence.

The Defence Team should endeavour to use the following category definitions when case planning:

3.2.2 Primary ~~disclosure~~ reserved evidence

3.2.2.1 Material served by the prosecution (e.g. witness statements, exhibits, interview transcripts etc) that supports the prosecution case.

3.2.3 ~~Secondary-Primary~~ disclosure

3.2.3.1 Material, not used by the prosecution which, All other evidence, having been reviewed, by the prosecution where it is felt the evidence either:

- undermines the prosecution case; or
- supports the defence case.

3.2.4 Secondary disclosure

3.2.4.1 Following submission of the defence case statement, any further material, not used by the prosecution, which having been reviewed, it is felt the evidence either:

- undermines the prosecution case; or
- supports the defence case.

3.2.45 Other ~~U~~unused material

3.2.45.1 All other material seized throughout the investigation that the prosecution say does not support their case, undermine their case, or support the defence case.

**3.3 Approach to disclosed prosecution evidence**

3.3.1 Upon initial consideration of the material, the Defence Team should, based on experience, endeavour to:

- determine the nature and content of the material; and
- determine the relevance (or potential relevance) of such material in light of the key issues of the defence case. This is subject to continuous review as further information becomes available.

3.3.2 Following the initial consideration of the material, the Case Manager, in conference with other members of the Defence Team, would normally be expected to:

- allocate work to the appropriate Defence Team member;
- Allocate a reasonable amount of time to undertake such work; and
- Determine the approach to take with this material, i.e. use of schedules, need to sift etc.

3.3.3 Core bundle

3.3.3.1 It may be appropriate for the Defence Team to create a core bundle of documents that can then be used to brief other Defence Team members about the key issues in the VHCC. The necessity to do such a task should be discussed with the Contract Manager and if it is agreed as necessary, an appropriate amount of time should be agreed between the Case Manager

and Contract Manager for such a bundle to be prepared and for the appropriate member(s) of the Defence Team to read and consider this core bundle.

### 3.3.4 Reading and considering

3.3.4.1 The time requested to read and consider material should ordinarily include time for noting and cross-referencing to other parts of the evidence.

3.3.4.2 The Defence Team, in deciding on the appropriate Defence Team member and amount of time required, would normally be expected to abide by the following principles:

- The amount of time requested by the Defence Team should ordinarily reflect the level of relevance to the identified key issues; and
- The Defence Team should work together to avoid any unnecessary duplication of work.

3.3.4.3 If the Representation Order grants authority for one Advocate, that Advocate, once instructed, would normally be expected to read and consider the required material in conjunction with the identified key issues.

3.3.4.4 If the Representation Order grants authority for two Advocates, both Advocates should work together to eliminate any unnecessary duplication of work. One such effective method would be ~~the~~ for the junior Advocate and the main Litigator in the VHCC to work together and act as an 'evidence filter' for the Leading Advocate. Such a filtering exercise would not apply to the core evidence bundle.

3.3.4.5 The Litigator responsible for taking the client's instructions would ordinarily be expected, if deemed appropriate, to provide the Advocate(s) with any relevant comments made by the client in order to assist the Advocate(s) with preparation.

3.3.4.6 Defence Teams might also want to consider sifting material where they feel it would be appropriate to do so (i.e. large volumes of material) and should discuss such an approach with the Contract Manager.

### 3.3.5 Use of schedules

3.3.5.1 In deciding whether schedules are reasonable and necessary, the Defence Team should endeavour to consider:

- ~~h~~How the schedule will assist in further work?
- ~~h~~How other Litigators and Advocates will use the schedule in their work?  
and
- ~~t~~The appropriate Defence Team member to undertake the work.

### 3.3.6 Dramatis personae / chronologies

3.3.6.1 The Defence Team would ordinarily be expected to consider whether the preparation of a Dramatis Personae and/or a chronology is likely to further the preparation of the defence case. In doing so, the Case Manager would normally be expected to demonstrate that any request for time to conduct such a task is reasonable and necessary; that it would benefit the preparation

of the defence case; and that there is a likely saving on time and/or cost on further work in the VHCC.

### 3.3.7 Electronic based evidence (i.e. hard drives, CD/DVD)

3.3.7.1 Provided the service of electronic based evidence is accompanied by a schedule of contents, the Case Manager should endeavour to use that schedule with the material to determine the relevance of the material to the defendant's case.

3.3.7.2 Where no schedule of contents is served, the Case Manager, in the first instance, would normally be expected to take all reasonable steps to obtain such information from the prosecution and if necessary by Judge's order.

3.3.7.3 When dealing with the material itself, the Case Manager may wish to consider the following:

- Is it possible to access the information in electronic format?
  - o i.e. what software packages/licenses are required?
  - o What types of hardware are required?
- Does the Panel Member or Counsel have the level of knowledge/expertise to access this information and/or undertake the task of analysing/considering this information in relation to the defence case? and
- Would it be more time and cost effective to instruct an expert?

### 3.3.8 Interviews

3.3.8.1 When undertaking work on interview material, the Defence Team may consider it appropriate to undertake the following tasks:

- Accuracy checks against interview tapes;
- Redacting;
- Reading and considering; and
- Summarising / scheduling (only if necessary).

3.3.8.2 The Defence Team should endeavour to make every effort to avoid unnecessary duplication of work when allocating these tasks. For example, the Defence Team may consider it appropriate to request time for junior counsel to read and consider the interview material and to check the accuracy of the transcripts.

### 3.3.9 Surveillance evidence

3.3.9.1 In the absence of a supporting schedule, the Defence Team would normally be expected to continue preparing the VHCC with the information held at that time. Should the Defence Team consider it appropriate and necessary to do so, the Defence Team may request such a schedule from the prosecution (whether by means of a court hearing or directly) detailing the contents of the media served and any schedule of analysis they may have formulated.

3.3.9.2 If such a schedule or other supporting documentation has been provided, the Defence Team should endeavour to identify the key parts of the surveillance evidence that are relevant to the defendant's case.

3.3.9.3 The Defence Team may also wish to consider the use of technology to streamline the material. For example, specific computer software packages are available that enable the user to identify only those parts of the audio evidence where conversations take place. This preliminary exercise would strip out those parts of the evidence where the recording device has simply captured background noise. The Defence Team should discuss this approach with the Contract Manager.

### 3.3.10 Linked cases

3.3.10.1 Where the VHCC involves evidence from another case (whether another VHCC or non-VHCC), the Defence Team should discuss with the Contract Manager:

- how the case is materially linked to their client's case; and
- how the material identified will either support their case; or
- will undermine the prosecution case.

3.3.10.2 The Defence Team should agree with the Contract Manager a reasonable and necessary amount of time to consider the evidence that is relevant to the defendant's case.

### 3.3.11 Defence generated material (3<sup>rd</sup> party disclosure)

3.3.11.1 The Defence Team should only request access to third party material where they are able to identify a specific purpose for accessing that material. In doing so, the Defence Team would normally be expected to bear in mind the test of relevance.

## **3.4 Taking client's instructions**

3.4.1 The taking of the client's instructions should ordinarily be conducted by the most appropriate level of fee earner having regard to the nature and complexity of the VHCC.

3.4.2 The Defence Team may wish to consider the use of technology when taking instructions in order to assist with future tasks such as preparing the client's proof of evidence and reducing/eliminating the time required for dictation.

### 3.4.3 The extent of instructions

3.4.3.1 Identifying such evidence should normally be part of the case planning phase and the Case Manager would ordinarily be expected to identify the parts of the evidence upon which instructions need to be taken.

### 3.4.4 How long should it normally take?

3.4.4.1 The Defence Team may be able to plan their stages based upon the client's instructions already taken during the pre-contract stage and the need to take further instructions on other parts of the evidence.

3.4.4.2 The Defence Team may wish to consider whether it would be beneficial to send a copy of the case papers to the client. This would give the client the opportunity to consider the case against him/her and be in a better position to answer questions or comment on specific parts of the evidence. The Defence

Team may wish to consider the use of technology (i.e. scanning of papers) when doing so.

#### 3.4.5 Foreign language speakers

3.4.5.1 The Defence Team may consider it appropriate to instruct an interpreter where they are able to justify the need on the following basis:

- The client's understanding of the case against him would be at risk without such an explanation being available in his/her primary language; or
- Whilst the client understands the case against him/her, the time involved in taking instructions (i.e. asking questions and obtaining explanations or comments) is likely to be extended because of his/her understanding of the English language.

3.4.5.2 The Defence Team would normally be expected to take into consideration when planning the VHCC whether it would be appropriate and more time/cost effective to allocate work to a particular Defence Team member based on their linguistic ability.

3.4.5.3 The Defence Team might also wish to consider whether translating particular parts of the evidence into the client's primary language would assist in terms of taking instructions. Being provided with the translated documents may assist the client to prepare for meetings with the fee earner and in turn reduce the time required in attendance.

#### 3.4.6 Availability of DVD/CD equipment

3.4.6.1 In cases where evidence is served electronically the Defence Team would normally be expected in the first instance to make every effort (and be able to demonstrate such effort) to obtain access to such necessary equipment or be granted permission to bring the necessary equipment into prison.

3.4.6.2 If permission is refused, the Defence Team should endeavour to inform the court and the prosecution of the problems which it has encountered and in the meantime address other parts of the evidence.

3.4.6.3 It is recognised, however, that due to security constraints, it may not be possible to take such equipment into prison. Therefore, the Defence Team need only demonstrate that such attempts were made.

3.4.6.4 When clients are on bail and can freely attend a Panel Member's offices to give instructions, the Defence Team would ordinarily be expected to ensure that all the necessary equipment is available for them to conduct an efficient meeting with the client.

### **3.5 Approach to unused material**

3.5.1 The Defence Team should endeavour to use the following process when considering unused material:

3.5.2 Stage 1 – unused material schedule (MG6C)

3.5.2.1 The Defence Team ought initially to consider the unused material schedule. The main fee earner in the case or counsel would ordinarily undertake this task. The purpose of such a task would be to identify, where possible, those parts of the unused material that, based on the description given in the schedule or some other independent knowledge of such material, are likely to either undermine the prosecution case or support the defence case.

3.5.3 Stage 2 – disclosure requests

3.5.3.1 Having identified those parts of the unused material it needs to see, the Defence Team may choose to then request access to or copies of that material. In the first instance, such a request should be made to the prosecution. If the material is not forthcoming, then the Defence Team should consider making an application to the court for disclosure in accordance with the CPIA<sup>4</sup> and the Protocol on the Disclosure of Unused Material<sup>5</sup>.

3.5.3.2 Where the entries or descriptions on the schedule are unclear, further information should be sought.

3.5.4 Stage 3 – relevance / value assessment

3.5.4.1 Upon receipt of the requested material, provided it is appropriate and time permitting, the Defence Team would ordinarily be expected to then assess the material and determine the relevance or value of such material to the defendant's case.

3.5.5 Stage 4 – reading and considering material

3.5.5.1 Once the relevance/value assessment has taken place, the Defence Team may then be in a position to determine the appropriate amount of time required to read and consider the relevant material and the appropriate Defence Team member(s) to conduct such a task (whilst at all times making every effort to eliminate unnecessary duplication). This task would ordinarily be allocated to the main fee earner in the case and junior counsel. If second counsel is to be instructed, the main fee earner and junior counsel would normally be expected, as part of their reading and considering task, to filter that material for leading counsel.

3.5.6 Large volume of unused material

3.5.6.1 In VHCCs where there is a large volume of unused material (see 'Categories of evidence'), the Defence Team may wish to consider whether viewing the material at the storage location would be more efficient.

3.5.6.2 If a decision were made to view the material in the first instance, the Defence Team would ordinarily be expected to obtain authority from the court to view that material. Only once such authority has been obtained should the Defence Team approach the Contract Manager to request the time required.

•

---

<sup>4</sup> CPIA: Criminal Procedure and Investigations Act 1996

<sup>5</sup> 'Disclosure: a protocol for the control and management of unused material in the Crown Court' (20/02/06 issued by HMCS)

3.5.6.3 In determining the time required, the Defence Team might choose to take the following approaches into consideration:

- Initial perusal of any unused material schedule served to determine which parts can be eliminated from the viewing;
- Conduct a preliminary view by the main fee earner and/or junior counsel (depending upon the quantity of material) to determine the volume and basic content;
- Subject to the outcome of the preliminary view, the Defence Team should determine whether further attendance is required, by whom and for how long.

#### **4. Phase 3: Preparation for trial, during trial and post trial**

##### **4.1 Preparation for trial**

4.1.1 When preparing for trial, the Defence Team should, in conjunction with their defence case statement, incorporate all work undertaken in preparation for trial (by Litigators and Advocates) into the proposed Task Lists.

4.1.2 The Defence Team should endeavour to plan the final pre-trial stages early in the VHCC in order to minimise duplication that might be caused by having to refresh memories, changes in evidence etc. For example, properly prepared summaries and schedules may shorten this process.

4.1.3 The Defence Team would normally not reread prosecution papers as an independent task. Reviewing prosecution evidence and notes made during previous stages is part and parcel of preparing for cross-examination or closing speech etc. These are tasks in their own right.

4.1.4 The Defence Team would not normally be expected to request time (outside of their refresher preparation) to read and consider their notes or 'livenote' transcripts in order to prepare for the next day unless they can justify the need to address specific parts of the notes/transcripts in order to properly prepare for a legal argument or for cross examination. In doing so, the Defence Team would normally be expected to identify those specific parts of the evidence that require review.

##### **4.1.5 Preparation of skeletons/submissions**

4.1.5.1 The Defence Team should endeavour to identify, where possible, one Advocate to undertake the main work involved in preparing skeleton arguments and/or legal submissions. The Defence Team should work together to determine the most effective and efficient means of preparing skeleton arguments and/or other legal submission documents.

##### **4.1.6 Jury bundles**

4.1.6.1 The Defence Team may wish to distinguish between:

- ~~c~~Cheking prosecution jury bundles; and
- ~~d~~Deciding on the content of defence jury bundles; and
- ~~c~~Collating documents into jury bundle format.

4.1.6.2 The Defence Team should endeavour to allocate the above tasks to the appropriate level of Litigator or Advocate.

## **4.2 Preparation during trial**

### **4.2.1 Attendance at court**

4.2.1.1 When planning their trial stage, the Defence Team may wish to consider:

- ~~t~~The need for a Litigator or Level C fee earner to attend trial; and
- ~~t~~The level of fee earner required to attend.

4.2.1.2 Unless there are circumstances to justify attendance by a Level A or Level B Litigator, the Defence Team would normally be expected to allocate a Level C fee earner to attend the trial.

4.2.1.3 The Defence Team might also want to consider the instruction of an agency clerk to attend the trial. In doing so, the Case Manager should endeavour to negotiate the best rate available, pursuant to satisfying quality standards, and provided it equates to no more than that payable at Level C attendance at court, the Defence Team should request authority from the Contract Manager.

### **4.2.2 Agreeing preparation time during trial**

4.2.2.1 When planning their trial stage the Defence Team may wish to consider how they may most effectively manage the Advocate's preparation time throughout the stage. One option open to the Defence Team is to:

- ~~p~~Propose a 'basket' of hours per week to cover all preparation work. This would be in addition to the preparation hours included within the daily refresher. The Case Manager will update the Contract Manager once every four weeks and the 'basket' amended as is deemed reasonable and necessary. The Defence Team should conduct a full review of this agreement with the Contract Manager at the end of the prosecution case.

## ANNEX 7

### RATES OF PAY

#### Preparation (hourly rates)

	Category 1 £	Category 2 £	Category 3 £	Category 4 £	Standard Rates £
<b>Solicitor</b>					
Level A sol	<u>145</u>	<u>113</u>	<u>91</u>	<u>91</u>	<u>55.75</u>
Level B sol	<u>127</u>	<u>100</u>	<u>79</u>	<u>79</u>	<u>47.25</u>
Level C sol	<u>84</u>	<u>65</u>	<u>51</u>	<u>51</u>	<u>34.00</u>
Pupil/junior <sup>1</sup>	<u>45</u>	<u>36</u>	<u>30</u>	<u>30</u>	
<b>Counsel</b>					
QC	<u>145</u>	<u>113</u>	<u>91</u>	<u>91</u>	
Leading junior	<u>127</u>	<u>100</u>	<u>79</u>	<u>79</u>	
Led junior	<u>91</u>	<u>73</u>	<u>61</u>	<u>61</u>	
Junior alone	<u>100</u>	<u>82</u>	<u>70</u>	<u>70</u>	
2nd Led junior	<u>63</u>	<u>50</u>	<u>43</u>	<u>43</u>	
<b>Solicitor Advocate</b>					
Leading level A	<u>145</u>	<u>113</u>	<u>91</u>	<u>91</u>	
Led level A	<u>127</u>	<u>100</u>	<u>79</u>	<u>79</u>	
Leading level B	<u>127</u>	<u>100</u>	<u>79</u>	<u>79</u>	
Led level B	<u>104</u>	<u>86</u>	<u>66</u>	<u>66</u>	
Level A alone	<u>131</u>	<u>109</u>	<u>88</u>	<u>88</u>	
Level B alone	<u>113</u>	<u>95</u>	<u>75</u>	<u>75</u>	
Second Advocate	<u>63</u>	<u>50</u>	<u>43</u>	<u>43</u>	

#### Advocacy<sup>2</sup>

Advocacy rates for counsel are paid per hearing or per day depending upon the duration of the court sitting time. Advocacy rates are non-category specific.

	Preliminary hearing	Half day	Full day
QC	<u>113</u>	<u>238</u>	<u>476</u>
Leading junior	<u>86</u>	<u>195</u>	<u>390</u>
Led junior	<u>58</u>	<u>126</u>	<u>252</u>
Junior alone	<u>67</u>	<u>143</u>	<u>285</u>
Second led junior	<u>34</u>	<u>64</u>	<u>128</u>
Noter	<u>29</u>	<u>55</u>	<u>109</u>

<sup>1</sup> This is to cover situations where the Representation Order cannot be amended to provide for a second junior counsel but the Case Manager determines that to achieve value for money certain items of work should be done by a third counsel.

<sup>2</sup> Solicitor-advocates will be paid the appropriate rate for a leading junior, a led junior, or a junior alone.

**Attendance at court with counsel (hourly rates for solicitors)**

Level A	£42.25
Level B	£34.00
Level C	£20.50

**Travelling and waiting**

£25 per hour regardless of Litigator Level or Advocacy role

**Mileage**

£0.45 per mile

## ANNEX 8

### PAYMENT AND DISBURSEMENTS

Please read this Annex in conjunction with Annex [4], particularly the section on auditing your claims for payment.

#### 1. Payment

- 1.1 Payment for work on VHCCs, where the Representation Order is granted on or after the Panel Start Date, will be governed solely by the terms of this Contract.
- 1.2 All payments for VHCC Work must be claimed in accordance with this Contract. You may only claim payment for VHCC Work under this Contract. You may not claim payment for VHCC Work under any other payment scheme.
- 1.3 All claims for payment for VHCC Work will be audited by us. The audit of VHCC Work is to determine whether it was actually and reasonably done and whether it was within the hours agreed and specified in a Task List.
- 1.4 Under this Contract, we will pay you for VHCC Work specified in a Task List which you have performed. Payment will be made after the end of each stage.
- 1.5 For the avoidance of doubt, the CCU will not pay for VHCC Work that is not agreed in advance and confirmed as such as set out in this Contract, unless one of the following exceptions apply:
  - a) it arises from the service of further papers in a category of documentation already agreed (e.g. notices of additional evidence, additional served exhibits, interview transcripts, served unused material, audio tapes and videos.) Authority will be implied for the consideration of all such material served within the life of the stage at the same minute per page formula as originally agreed. That authority will be at the same hourly rate as agreed for the original material;

OR

- b) it falls within an item agreed in a Task List, and
  - (i) it is within a tolerance of 10% of the hours agreed for that item in that Stage; and
  - (ii) it is reasonable and necessary for the work to be done (assessed as part of the end stage audit); and
  - (iii) all genuine efforts have been made to contact a Contract Manager in the CCU. Defence Teams must be able to demonstrate (i.e. provide evidence) that an email had been sent to the Contract Manager assigned to the VHCC and evidence of attempts to contact the CCU to seek authority for any amendments;

OR

- c) it arises as an 'emergency' piece of work (i.e. work that needs to be done by the next working day) and prior authority cannot be sought from the CCU because the need for the task is only identified outside CCU office hours or for example, during trial (i.e. the work was not foreseeable on the previous working day or earlier);

OR

- d) it is work by an Advocate ~~during the trial stage and is included within the Advocate's daily rates for advocacy (see Annex [9] 'Instructing Advocates')~~ undertaken during the trial, including preparation undertaken during the course of the court day. The CCU agrees that all work properly and reasonably undertaken by the Advocate and accounted for in their work log will be paid at the appropriate rate, subject to its being satisfied that such work could not have been included when planning their trial stage Task List (see Annex 9 'Instructing Advocates').

- 1.6 All VHCC Work carried out by all Defence Team members (including Key Members) will be paid at the hourly rate(s) specified in Annex [7] on 'rates of pay'.
- 1.7 If you are registered for VAT, we will pay VAT on top of your hourly rate. Any VAT charges must be set out in your claim for payment (by claim for payment, we are referring to the Audit Bundle you submit at the end of a Stage). If, through your error, we are not informed of your VAT registration, we will not be liable for any backdated VAT charge that you later inform us of.
- 1.8 The hourly rate(s) are fixed for the Panel Term. There will be no review of hourly rates between the Panel Start Date and the Panel End Date.
- 1.9 Payment is subject to our receiving the required Audit Bundle at the end of a stage, as this triggers the payment and is necessary to allow us to monitor this Contract.
- 1.10 We will make all payments by BACS transfer after completion of the assessment. The timing of payment for VHCC Work is governed by this Contract alone.
- 1.11 We will pay Panel Members directly for all VHCC Work carried out by them and their employees. We will pay Panel Advocates (self-employed Barristers and self-employed solicitor-advocates) directly.
- 1.12 If it becomes apparent that you have been overpaid, we reserve the right to recoup any money paid to you in excess of the amount due. We may set off against any amount payable by us to you under this Contract or otherwise, any amount payable by you to us under this Contract or otherwise. This clause continues to have effect after this Contract has ended.
- 1.13 If you have spent more hours providing the VHCC Work than is authorised under this Contract, you will not receive payment for such hours unless one of the exceptions set out at clause 1.5 above applies.

Specific work that is paid for/ not paid for under this Contract:

Appeals (work related to appeals against conviction and/or sentence to the Court of Appeal)	The CCU will only pay for negative advice on appeal against conviction and/or sentence (i.e. a short meeting and/or a short written advice to the client). The CCU will not pay for work related to a positive advice on appeal (i.e. drafting grounds of appeal). This would instead be billed to the Court of Appeal Criminal Division.
Standard rate work	Standard rates will be used where the task is quasi-administrative – i.e. where the task does not fall within the realms of administration but does not require any legal knowledge or analysis. The standard rates for each Litigator level are set out at Annex [7] 'Rates of pay'.
Routine correspondence (for Panel Members only)	This includes making appointments to see the client and the Advocate(s), corresponding with the prosecuting authority, responding to correspondence and corresponding with the court. The Contract Manager and the Case Manager will discuss a weekly allowance for routine correspondence, at Level B rate (appropriate to the VHCC category) for each stage of the Contract. Advocates are not entitled to any allowance for routine correspondence.
Training	The CCU will not pay for any training of Litigators or Advocates or any other member of the Defence Team.

**2. Panel Member error or omission**

- 2.1 Where work has been undertaken as a result of your error or omission, you are not entitled to claim payment for it under this Contract and any payments made for it are repayable to us.

**3. Disbursements**

- 3.1 The CCU will issue Guidance on guideline rates for experts payable under this Contract.
- 3.2 The following table sets out various disbursement types. The list is not exhaustive.

Travel	Travel time is paid for all attendances at prison, at court and to conferences for both the Litigators (including Level C fee earners) and Advocates (including pupils). This is subject to the conditions set out under 'VHCC Distant Travel rules' below. For the purposes of taking instructions, clients must attend the Litigator at his/her organisation's offices unless they are in custody, suffering from a serious illness or at a location under control orders imposed by the court. Where the client is suffering from a serious illness, any request to attend upon the client must be supported by a letter from a GP. Where the client is subject
--------	--

	to control orders, the Litigator and/or Advocate must obtain prior written consent from the Contract Manager to attend the client at his/her location.
Waiting	The CCU will pay for waiting time when the Litigator and/or Advocate is waiting at prison to see the client or at court waiting for the court to sit. Any time spent by the Advocate(s) and/or the Litigator(s) at court when waiting for the jury to return its verdict will be paid as waiting time subject to an assessment of the half-day refresher fee.
VHCC Distant Travel rules	<p>The Panel will be a national panel (providing criminal defence services across England and Wales) and Panel Members and Advocates (including Panel Advocates) are not restricted to offering their defence services in any particular geographical location. However, the CCU will apply the following VHCC Distant Travel rules where there is a more local Panel Member or Advocate (whichever is applicable) available.</p> <p>For Panel Members, where this rule applies, the CCU will pay a maximum of <del>one</del><u>two</u> hours (by whatever method of transportation) and, if travelling by car, a distance of <del>2550</del> miles each way. <del>If there is not a Panel Member "local" to the client, the CCU will only consider additional travel costs if the client is situated further than two hours (by whatever method of transportation) or, if travelling by car, a distance of 50 miles each way from a Panel Member able to undertake the work.</del></p> <p>For Advocates, where this rule applies, the CCU will pay a maximum of <del>one</del><u>two</u> hours (by whatever method of transportation) and, if travelling by car, a distance of <del>2550</del> miles each way. <del>If there is not an Advocate "local" to the court, the CCU will only consider additional travel costs if the court is situated further than two hours (by whatever method of transportation) or, if travelling by car, a distance of 50 miles each way from an Advocate able to undertake the work.</del></p> <p>When applying the VHCC Distant Travel rules, the CCU will consider requests for additional travel time and cost on a case-by-case basis, using discretion where it is considered by the CCU to be appropriate to do so.</p>
Accommodation and subsistence	Only in exceptional circumstances will the CCU pay for overnight accommodation and/or subsistence. If exceptional circumstances do present themselves and the acceptance of instructions or a brief is reasonable, overnight expenses should be based on a reasonable local rate – subject to any discounts that can be negotiated. Where this applies, the CCU will pay subsistence up to £20 per day. Receipts must support subsistence claims.
Photocopying / Scanning / Copying electronic	The CCU will pay for all photocopying if it is reasonable to do so, regardless of the amount being copied but would not expect to pay more than four pence per page for black and white copying. For colour photocopies, a higher rate per page may apply and

material	<p>Defence Teams should seek to obtain the best available price.</p> <p>If the Crown serve evidence on disk/CD Rom the CCU will pay for the cost of copying these media provided it is necessary to do so and the cost is reasonable.</p> <p>Where the prosecuting authority has provided evidence in hard copy and the Defence Team wishes to utilise a software package, a disbursement for scanning the papers will be considered. The CCU would not expect to pay more than 5 pence per page.</p>
Agency fees	<p>Where a Panel Member instructs an agency to undertake VHCC Work, the claim for such work must be made by way of a disbursement. For example, where a Panel Member instructs a 'clerking agency' to attend court in place of their own Level C fee earner, the CCU will only pay the agency fees and not the hours undertaken at Level C rate.</p> <p>Where a Panel Member employs a number of Level C fee earners (i.e. they hold a contract of employment and have access to all rights of permanent full time employees) to undertake VHCC Work, that work will be remunerated (subject to agreement by the Contract Manager) at Level C fee earner rates.</p>
Livenote	<p>For information on the use of Livenote in VHCCs please refer to Annex {10} 'Instructing Experts'</p>

Provisions on your rights to appeal certain decisions related to payment and disbursements are set out in Annex {14}.

## ANNEX 9

### INSTRUCTING ADVOCATES

#### 1. General

- 1.1 Work on VHCCs can only be carried out by employees of the Panel Member (which may include employed Advocates) or Panel Advocates. Other than this, anyone else who is self-employed cannot conduct work on VHCCs without the CCU's express prior written permission.
- 1.2 As part of your tender, you submitted details of the Key Members of your Defence Team, which included a list of Advocates you would consider instructing on VHCCs. The names of the Advocates included in your tender are listed in Annex [2] 'Key Members of your Defence Team by Category'. In this Contract, Advocates who are self-employed are referred to as Panel Advocates.
- 1.3 You are obliged to inform us whenever any Key Members of the Defence Team listed in that Annex change. If an Advocate leaves the Panel, the Defence Team is not permitted to replace that Advocate during the Panel Term without the prior written consent of the CCU. Any replacement Advocate would need to meet, as a minimum, the essential criteria met by the Panel Member when it tendered.
- 1.4 Advocates who are solicitor-advocates must have a current Practising Certificate. Advocates who are Barristers must be registered with The Bar Council of England and Wales as practising barristers. You are obliged to inform us whenever a solicitor-advocate Defence Team member's Practising Certificate is revoked or whenever a barrister Defence Team member is 'disbarred'.
- 1.5 Responsibility for identifying and instructing Advocates lies with the Panel Member. The Case Manager is responsible for managing an Advocate's contribution to the work of the Defence Team. The Panel Member should only instruct Advocates, in the first instance, from the Advocates listed at Annex [2]. In the event that the Panel Member is not able to instruct an Advocate from that list, the Panel Member may, having obtained permission from the CCU, instruct an Advocate from the 'VHCC Advocate List'. All Advocates nominated by successful applicants in the 2007 tendering exercise have been placed on one list available for use by all Panel Members.
- 1.6 The courts will remain responsible for decisions on the number and level of Advocate(s) that can be appointed to act on any VHCC. This will be formalised in the Representation Order for that client. Both you and the CCU must operate within these decisions. The CCU does not have any discretion to go behind the Representation Order and therefore can only pay Advocates at the appropriate rates for their level as specified on that Representation Order at the date the Advocate conducted the work.
- 1.7 Alongside the general requirement to instruct Advocates with the necessary experience and expertise, the Panel Member must also take account of the need, as far as is reasonably possible, to ensure that the Advocate(s) selected will be available throughout the VHCC.

- 1.8 The Panel Member should conduct regular reviews of the work conducted by the instructed Advocate(s), to ensure they are providing the required quality of advice and level of service. Where issues arise, you are expected to address these with the Advocate(s), and, between you, identify why these issues have arisen and, where appropriate, agree what must be done to prevent these issues arising in the future.

## 2. Trial Stage

- 2.1 Advocates must carry out all reasonable and necessary work to represent the lay client properly. They will be paid daily advocacy rates during the trial. This includes two hours' preparation during a full court day and one hour during a half-day (see Annex ~~7~~ 'Rates of pay' for information on full and half days). It is acknowledged that such time will regularly be expended during the trial in consulting with the lay client, instructing solicitors, prosecution counsel, co-defending counsel and others. All such preparation will be deemed to have taken place between 9.00 am and 5.00 pm (the court day).

- 2.2 Any preparation for the trial stage that can be identified before the start of the trial or during the trial can and should be negotiated and agreed in advance with the Contract Manager. Preparation that is necessary during the course of the trial should be undertaken either during the court day or after the court day. Work that might be undertaken during the court day includes (this list is not exhaustive):

- ~~---~~ the reading of served material requiring immediate attention;
- ~~---~~ conferences with the client;
- ~~---~~ meetings with instructing solicitors; and
- ~~---~~ meetings with the prosecution.

- 2.3 Work that might be undertaken after the court day might include preparation which requires drafting or research, or is likely to require a long period of uninterrupted preparation or the use of a computer.

- 2.4 Advocates should prepare work logs for all preparation undertaken during the trial, including preparation undertaken during the course of the court day. The CCU agrees that all work properly and reasonably undertaken by the Advocate and accounted for in their work log will be paid at the appropriate rate, subject to its being satisfied that such work could not have been included when planning their trial stage Task List.

- 2.5 The specific agreement of the Contract Manager to any significant item of additional work may be sought at any time throughout the trial stage. The Case Manager (or Leading Advocate, if the two are not the same) should contact the Contract Manager every ~~two-four~~ weeks during the trial to discuss changes to the VHCC arising from the trial and to highlight additional work being undertaken.

## 3. Substitute Advocates

- 3.1 Where it is necessary for a Substitute Advocate to undertake any VHCC Work, that Advocate will be treated as a subcontractor.

- 3.2 Claims for any work undertaken by a Substitute Advocate must be submitted, by separate invoice, with the instructed Advocate's claim for work as part of the Defence Team's Audit Bundle (see Annex {4}). A template invoice for this purpose will be provided by the CCU. A claim in any other format will be not be considered by the CCU and will not be paid.
- 3.3 The CCU will make a total payment to the instructed Advocate, inclusive of VAT (assuming s/he is VAT registered).
- 3.4 The instructed Advocate will be liable to account to HMRC for that VAT, but may deduct any VAT which is paid by him/her to a Substitute Advocate, as input tax.
- 3.5 Appropriate records must be kept for VAT inspection, including copies of VAT invoices issued by the instructed Advocate and VAT invoices issued to the instructed Advocate by any Substitute Advocate.

#### 4. Return of Brief

4.1 Where the Contract Manager decides it is reasonable for an Advocate to return a brief all reasonable costs will be paid upon production of an Audit Bundle. Please refer to Annex {4} for further information on auditing requirements.

4.2 A reasonable return of brief might include:

— where the Advocate withdraws due to professional embarrassment;

— where the trial dates of the VHCC 'clash' with a case upon which the Advocate was instructed prior to the instruction on the VHCC;

— where the Advocate is sacked by the client but not as a result of improper behaviour on the part of the Advocate; or

— where the Advocate succumbs to a serious illness. This should be substantiated wherever possible or reasonable with a doctor's note or similar.

4.3 If the CCU concludes that it was unreasonable for an Advocate to return a brief, costs may be withheld or, if already paid, recouped.

4.4 An unreasonable return of brief might include:

— where the trial dates of a new case 'clash' with a VHCC upon which the Advocate was instructed prior to the instruction on the new case. To do so ~~might~~would be unreasonable as the Advocate should return the brief of the case that was accepted last;

— where the Advocate is sacked by the client as a result of improper behaviour and this can be proven - for example, failure to turn up to court without reasonable justification;

— where the Advocate takes a planned sabbatical (i.e. the Advocate has planned to take a length of time off knowing they are holding the brief for a VHCC);

— where the Advocate does not accept the category assigned to the case and returns the brief as a result; or

— where the Advocate does not accept the hours agreed by the Contract Manager (or CCU) and returns the brief as a result.

4.5 The CCU will consider each return of brief on a case-by-case basis in line with the CCU and Bar Council guidelines.

4.6 If the CCU decides that an Advocate has unreasonably returned a brief, the Advocate will be deemed to be in breach of this Contract. Please refer to Annex [13] on breaches of contract for further details. Where the Advocate is employed by a Panel Member, that Panel Member will be deemed to be in breach of this Contract. Where the Advocate is a Panel Advocate (i.e. self-employed), the Panel Advocate only will be deemed to be in breach of his/her contract.

## ANNEX 10

### INSTRUCTING EXPERTS

- 1.1 Defence Teams must ensure that experts are instructed and managed in an efficient and effective manner. Please refer to Phase 1 of the Best Value Protocol at Annex [6]: 'Case Planning - Selection and instruction of experts' for further information on how a Defence Team would ordinarily be expected to act with regard to the instruction of experts.
- 1.2 The Panel Member must provide at least three quotes to the Contract Manager.
- 1.3 The Panel Member will be responsible for managing the work of the experts as part of the Defence Team and for paying them. We will not pay experts direct.
- 1.4 VAT should be charged on all services except where the supplier is not VAT registered – e.g. if you are paying a disbursement for a translator, check on their invoice if they have a VAT registration number. If there is no number, they are not VAT registered and VAT should not be added to their invoice.
- 1.5 The CCU will issue Guidance on the level of experts' fees it would expect to pay.

#### 1.6 Livenote Court Transcription

- 1.6.1 All applications for Livenote should be made using the 'Livenote Application Form' issued by the CCU and should be submitted to the Contract Support Team in the CCU London office.
- 1.6.2 The CCU will only pay for:
  - a maximum of two connections per client (where a Panel Member represents two clients the CCU will pay for a maximum of three connections);
  - the appropriate share of the one off set up fee; and
  - the appropriate share of the daily set up fee.
- 1.6.3 The CCU will not pay for:
  - training for Litigators or Advocates on the use of Livenote;
  - laptop hire;
  - second or subsequent copies of transcripts;
  - disk copies of transcripts;
  - delivery of transcripts;
  - remote connections; or
  - any other element of work quoted or invoiced.
- 1.6.4 Each Defence Team should then elect a representative at trial to receive by email the electronic copy of the transcript.

#### 1.7 Travel (by experts)

- 1.7.1 Experts' fees for their travel time (unless indicated otherwise above) should be allowed at a rate of 1/2 to 2/3rds of their rates for doing the work.
- 1.7.2 The CCU will ~~not~~ pay experts for their travel disbursements such as rail fare or mileage provided those disbursements are reasonable and necessary.

## ANNEX 11

### KEY CONTACTS

	<b>Legal Services Commission's representatives</b>	<b>Defence Team's representatives</b>
	<b>Contract Manager</b>	<b>Case Manager</b>
Name		
Address		
Email Telephone no Fax no		
	<b>Senior Executive</b>	<b>Senior Executive</b>
Name	Head of the Complex Crime Unit	
Address	Complex Crime Unit Legal Services Commission 11 <sup>th</sup> Floor Exchange Tower 2 Harbour Exchange Square London E14 9GE  DX 170 Chancery Lane	
Email Telephone no Fax no	<a href="mailto:ccu@legalservices.gov.uk">ccu@legalservices.gov.uk</a> 0207 718 8035 0207 718 8018	

## ANNEX 12

### PEER REVIEW PROCESS

- 1.1 Peer Review is the direct independent assessment of the quality of advice and legal work by the Panel Member, carried out by experienced peer practitioners. The use of Peer Review as an assessment tool demonstrates our commitment to ensure that clients receive a high quality service. It is also recognition of practitioner feedback that an independent evaluation by experienced peers is the most appropriate assessment of quality of advice.
- 1.2 An independent research team at the Institute of Advanced Legal Studies (IALS) developed the Independent Peer Review Framework and Methodology used by the LSC. Peer Reviewers assess a stratified random sample of a Panel Member's case files using a standard criteria and ratings system. This enables them to determine the quality of advice and legal work provided to clients in a particular category of work.
- 1.3 The criteria are designed to highlight the quality of:
  - the information gained from the client and other sources;
  - the advice given based on that information; and
  - the steps taken following that advice.
- 1.4 Following their assessment of the files using the criteria, the Peer Reviewer makes an overall judgement concerning the quality of advice and legal work provided by the Panel Member. This is assessed using a 1-5 rating system, which is as follows:
  - Excellence (PR1);
  - Competence Plus (PR2);
  - Threshold Competence (PR3);
  - Below Competence (PR4); or
  - Failure in Performance (PR5)

## ANNEX 13

### BREACHES OF CONTRACT

- 1.1 The following table sets out potential breaches of this Contract, the corrective action we would require to be carried out and by when, and any consequences of a failure to meet the deadline for corrective action. Some breaches may be so serious they may result in immediate termination of this Contract (the consequences for each breach of contract are set out in the table below). We are likely to suspend payments until any breaches have been rectified, if they are capable of being rectified.
- 1.2 We will keep a log of any breaches of this Contract and note for future tendering exercises. These will be noted as part of performance monitoring.
- 1.3 **NOTE:** In the case of any breach which we allow you time to remedy, we may withhold your next payment until the breach has been rectified to our satisfaction. This right to withhold payment is in addition to the steps we may take as set out in the table below. The right to withhold payment applies to any payment due on the VHCC you are working on under this Contract in respect of which the alleged breach of contract has arisen. Payment in respect of all other VHCCs is unaffected and will be payable in accordance with the terms of this Contract.

#### 2. Irremediable breaches

If you have breached this Contract and the breach is not capable of remedy, we may write to you requiring you not to repeat the breach. If you repeat the breach, or we write to you in connection with any other breach, we may terminate this Contract, or any part of it, with effect from such date as we may specify in the notice.

#### 3. Remediable breaches

- 3.1 If you have breached this Contract and the breach is capable of remedy, we may write to you requiring you to remedy the breach within such period as we may specify, normally not less than 20 working days.
- 3.2 If you fail to remedy the breach to our reasonable satisfaction within the timescale, we may terminate this Contract, or any part of it, with effect from such date as we may specify in the notice.

#### 4. Fundamental breach

There are some breaches that are so serious that they go to the heart of the Contract and are not considered to be capable of remedy –see the section on fundamental breach in the General Criminal Contract at Annex {18}. In such cases, without offering you an opportunity to remedy the breach, we may terminate this Contract, or any part of it, with effect from such date as we may specify in the notice.

<b>Breach</b>	<b>Remedial action and time limits</b>	<b>Consequence(s)</b>
Misrepresentation of any information during the tendering exercise that allowed you to gain an advantage and entry onto the Panel.	No remedial action, immediate Contract termination.	<ul style="list-style-type: none"> <li>- Immediate recoupment of all VHCC funding under this Contract; and</li> <li>- the CCU may terminate this Contract.</li> </ul>
Fraudulent claiming (including over claiming).	No remedial action, immediate Contract termination.	<ul style="list-style-type: none"> <li>- Immediate recoupment of any VHCC funding which is the subject of the fraudulent claiming; and</li> <li>- the CCU may terminate this Contract.</li> </ul>
Misrepresentation of any information during the Panel Term that allows you to access funding you would not ordinarily have been able to access (by misrepresentation we mean fraudulent or negligent misrepresentation).	No remedial action.	<ul style="list-style-type: none"> <li>- Recorded under performance monitoring; and</li> <li>- immediate recoupment of any VHCC funding which is the subject of the misrepresentation; and</li> <li>- if repeated, the CCU may suspend Contract<sup>5</sup>.</li> </ul>
Misrepresentation of the CCU to the client or court (by misrepresentation we mean fraudulent or negligent misrepresentation).	No remedial action.	<ul style="list-style-type: none"> <li>- Recorded under performance monitoring; and</li> <li>- if repeated, CCU may suspend Contract.</li> </ul>

• \_\_\_\_\_

<sup>5</sup> If the CCU suspends a Contract, the Panel Member will not be able to take on any new VHCCs and may, subject to the seriousness of the breach, be prohibited from working on any existing VHCCs. The CCU, acting responsibly, reserves the right to stop a Panel Member carrying out any VHCC Work in certain very serious situations.

<p>Failure to comply with any time limits set out in the VHCC contracting process timetable set out in Annex [4].</p>		<ul style="list-style-type: none"> <li>- Recorded under performance monitoring; and</li> <li>- if repeated, CCU may impose limits (e.g. suspension of payments on some or all VHCCs running under this Contract until failure rectified); and</li> <li>- persistent failure to meet the deadlines specified in Annex [4] (meaning on three or more occasions in respect of one VHCC, provided that not meeting a deadline as a result of a force majeure event or as a result of an act or omission of the CCU or the LSC shall not constitute a failure to meet a deadline) may result in termination of this Contract.</li> </ul>
<p>Failure to maintain any material Quality Standards.</p>	<ul style="list-style-type: none"> <li>- CCU will issue guidance on how to rectify this breach;</li> <li>- time limit to be specified.</li> </ul>	<ul style="list-style-type: none"> <li>- Recorded under performance monitoring; and</li> <li>- if not rectified, CCU may suspend Contract; and</li> <li>- if substantial failure, CCU may terminate this Contract.</li> </ul>
<p>Failure to maintain selection criteria requirements to the extent you met them in your tender throughout Panel Term.</p>	<ul style="list-style-type: none"> <li>- CCU will issue guidance on how to rectify this breach;</li> <li>- time limit to be specified.</li> </ul>	<ul style="list-style-type: none"> <li>- Recorded under performance monitoring; and</li> <li>- if not rectified, CCU may suspend Contract; and</li> <li>- if substantial failure, CCU may terminate this Contract; and</li> <li>- immediate recoupment of any funding resulting from this failure.</li> </ul>
<p>Failure to maintain a Peer Review rating of 'threshold competence' (PR3) or above throughout Panel Term.</p>	<p>Please refer to Peer Review table below.</p>	<p>Please refer to Peer Review table below.</p>

<b>Breach</b>	<b>Remedial action and time limits</b>	<b>Consequence(s)</b>
Investigation of any Defence Team member by any regulatory body that results in the suspension or striking off of one or more Level A or Level B Litigators.	No remedial action.	<ul style="list-style-type: none"> <li>- Recorded under performance monitoring; and</li> <li>- if not rectified, CCU may suspend Contract; and</li> <li>- if substantial failure to rectify, CCU may terminate this Contract; and</li> <li>- immediate recoupment of any funding resulting from disciplinary action.</li> </ul>
Unreasonable return of brief by an Advocate (this breach would only apply to a Panel Member if the Advocate was employed by that Panel Member).	No remedial action.	<ul style="list-style-type: none"> <li>- Recorded under performance monitoring; and</li> <li>- if repeated – CCU may remove Advocate from the VHCC Advocate List; and</li> <li>- CCU may report incident to Bar Council/ Bar Standards Board/ Law Society/ Solicitors Regulation Authority (as appropriate for barristers/ solicitor-advocates); and</li> <li>- immediate recoupment of any funding resulting from the unreasonable return of brief.</li> </ul>
Unreasonable withdrawal of Litigator.	No remedial action.	<ul style="list-style-type: none"> <li>- Recorded under performance monitoring; and</li> <li>- CCU may suspend Contract; and</li> <li>- if wholly unreasonable and unjustifiable withdrawal, CCU may terminate this Contract; and</li> <li>- immediate recoupment of any funding resulting from such a transfer.</li> </ul>
Failure to refer clients to other Panel Members.	<ul style="list-style-type: none"> <li>- Withhold all outstanding payments for VHCC Work until breach rectified;</li> <li>- breach must be rectified within one working day of notification of the breach.</li> </ul>	<ul style="list-style-type: none"> <li>- If failure to rectify, CCU may suspend Contract; and</li> <li>- if repeated, CCU may terminate this Contract.</li> </ul>

<b>Breach</b>	<b>Remedial action and time limits</b>	<b>Consequence(s)</b>
Wasted cost order(s) made against you and confirmed after any appeal.	No remedial action.	<ul style="list-style-type: none"> <li>- Recorded under performance monitoring; and</li> <li>- Immediate recoupment of the relevant portion of funding which was the subject of such an order.</li> </ul>
Failure to notify CCU of a case being a VHCC at all.	No remedial action.	<ul style="list-style-type: none"> <li>- CCU may suspend Contract; and</li> <li>- if repeated, CCU may terminate this Contract; and</li> <li>- immediate recoupment of any funding resulting from such a breach.</li> </ul>
VHCC Work has been subcontracted without prior written authority from the CCU.	No remedial action.	<ul style="list-style-type: none"> <li>- Depending on the seriousness of the breach, the CCU may deal with the issue as an irremediable breach (see rule 2); or</li> <li>- CCU may suspend Contract; and</li> <li>- if wholly unreasonable or unjustifiable subcontracting, CCU may terminate this Contract.</li> </ul>

## 5. Peer Review

<b>Rating</b>	<b>Rating description</b>	<b>Action</b>
PR4	Below competence	Rating notified. Representations received. If rating confirmed, corrective action required. Further Peer Review carried out to test corrective action. Rating notified. Representations received. If rating confirmed, contract notice issued. One more rating of PR4 or PR5 would normally lead to immediate termination of this Contract.
PR5	Failure in performance	Rating notified. Representations received. If rating confirmed, further Peer Review carried out (scheduled immediately). Rating notified. Representations received. If PR4 or PR5 rating confirmed, the CCU may terminate this Contract immediately.

## ANNEX 14

### VHCC APPEALS COMMITTEE

- 1.1 This Contract establishes the VHCC Appeals Committee (“the Committee”). Members of the Committee shall hear appeals relating to payment and funding issues brought under this Contract.
- 1.2 Where the Defence Team disagrees with a decision made by a Contract Manager or any other member of the CCU or LSC, the Defence Team has a right to appeal that decision to the Committee.
- 1.3 If the Defence Team appeals a decision made by a Contract Manager, the CCU or LSC, the Defence Team, without prejudice to the appeal, should continue to work on the VHCC and continue to comply with the terms and conditions of this Contract. For the avoidance of doubt, an appeal by a Defence Team to the Committee is an appeal against a decision not to provide funding and should not affect the proper preparation of the defence case.

## 2. Right to appeal

- 2.1 You have a right of appeal to the Committee under this Contract on the following issues only:
  - a) individual tasks disputed on the submitted Task List;
  - b) the category assigned to the VHCC and notified to you by the CCU;
  - c) hours in dispute within the submitted Task List;
  - d) the level of fee-earner/ Advocate allowed for any item of VHCC Work;
  - e) disbursements;
  - f) where the CCU decides to reduce payment under the Contract as a result of the Representation Order being amended to show another Panel Member as the nominated firm, either as a result of the client’s request or because you wish to cease acting. Where an Advocate is required to return the brief in either of these circumstances, the CCU may take similar action and the right of appeal will be available to the party concerned in the same manner;
  - g) where the CCU decides to delay or withhold payment to a legal representative in accordance with its powers under the applicable regulations; or
  - h) where an assessment is made by the CCU whilst conducting an audit of VHCC Work, and the assessment results in the refusal of payment on some or all of the VHCC Work based on any reason other than the points below in rule 2.2. This excludes the application of an Advocate’s role as specified on the Representation Order (please see point (g) below).
- 2.2 You do **not** have a right of appeal to the Committee under this Contract on the following issues:
  - a) where VHCC Work was agreed on the basis of false or misleading information and payment has therefore been refused;
  - b) where a Task List is not approved due to the omission of the required details and information;

- c) where VHCC Work was not agreed (subject to the exceptions set out in rule 1.5 in Annex {8}) and a decision is made by the CCU not to make payment for that VHCC Work;
- d) where the total hours worked for a task exceed the hours agreed for that task and the CCU makes a decision not to pay for those exceeded hours;
- e) where you have missed the ten working day deadline (see 'appeal process' below) to appeal the decision made by the Contract Manager (or an extended deadline agreed by the CCU) and the CCU refuses to accept your appeal representations on such a basis;
- f) where the VHCC has been re-categorised at the start of any stage throughout the life of the VHCC, the date on which the new category applies (please see rule 1.1.4 of Annex {5});
- g) where the CCU has applied the Advocate levels as specified on the Representation Order and you are not working at that level. The CCU does not have any discretion to go behind the Representation Order;
- h) where the CCU has decided to suspend or terminate your Contract; or
- i) any other matter that is not covered by 2.1 a) to h) above (including a decision by the CCU to terminate your Contract, for which see clause {28.3} of this Contract).

### 3. Appeal process

- 3.1 The following table sets out a number of tasks to be carried out by the CCU and the Defence Team and the deadlines imposed. Extensions to the imposed deadlines may be granted by agreement between the Case Manager and the Contract Manager.
- 3.2 Where the Defence Team is required to submit written documentation to the CCU, all documents must be typed unless otherwise agreed with the Contract Manager. Submission of handwritten documents may result in a delay to the process and any such delay caused solely by the Defence Team will be recorded under performance monitoring.

Task	Deadline
<p>The appeal must be made in writing (by fax, email or post), using the 'appeal representations' document provided to you by the CCU. Your appeal will not be lodged if your representations are submitted in any other form.</p> <p>Your appeal representations (using the appeals document provided to you by the CCU) should include:</p> <ul style="list-style-type: none"> <li>a) background to the VHCC;</li> <li>b) details of the item(s) in dispute; and</li> <li>c) full reasons why you disagree with the Contract Manager's decision.</li> </ul>	<p>Any appeal must be lodged with the Committee clerk within ten working days of receipt of the original decision.</p> <p>For the purposes of this Contract, the original decision will be deemed to be made when the Contract Manager verbally conveys his/her decision or when the Contract Manager conveys his/her decision in writing, whichever is the sooner.</p>

Task	Deadline
<p>On receipt of the appeal representations (copy provided by the Committee clerk) the Contract Manager shall give his or her reasons for the decision in writing and shall lodge these with the Committee clerk. The reasons for the decision will be set out in the appeal response template provided by the CCU.</p>	<p>The Committee clerk will provide the Contract Manager's appeal response in writing to the appellant within ten working days of receipt of the appeal representations.</p>
<p>CCU to list an appeal hearing and communicate the hearing date to the appellant.</p>	<p>The Committee clerk will communicate the date of the appeal hearing to the appellant within ten working days of the date of the CCU's appeal response.</p>
<p>Appeal bundle prepared and issued.</p> <p>The appeal bundle will consist of:</p> <ul style="list-style-type: none"> <li>- appeal representations;</li> <li>- appeal response;</li> <li>- case summary;</li> <li>- indictment; and</li> <li>- any other supporting documentation.</li> </ul> <p>And will be copied and issued to:</p> <ol style="list-style-type: none"> <li>a) the appellant;</li> <li>b) the respondent; and</li> <li>c) the Committee members.</li> </ol>	<p>The Committee clerk will prepare an appeal bundle and issue copies of the bundle ten working days prior to the appeal hearing.</p>
<p>Appeal hearing</p> <p>(See below for further information on the appeal hearing).</p>	<p>The Committee clerk will convene an appeal hearing within <del>six</del> six weeks (30 working days) from the date on the appeal response.</p>
<p>Decision</p> <p>The final decision of the Committee will be made and communicated in writing to the appellant and the respondent within five working days of the appeal hearing.</p>	<p>The Committee clerk will communicate the decision of the Committee to the appellant and the respondent in writing within five working days of the appeal hearing.</p>
<p>Website</p> <p>The decision of the Committee will be published on the LSC website.</p>	<p>The decision will be available on the LSC website within 30 working days of the date of the decision.</p>

#### **4. The Committee**

- 4.1 The Committee appointed under this Contract deals with applications for appeal against a payment/ funding decision made by the CCU as provided for by this Contract.
- 4.2 Membership of the Committee and the roles and responsibilities of the members of that Committee are set out in a separate document, which is available upon request.
- 4.3 The appeals manager will be responsible for convening the Committee. It is the responsibility of the appeals manager to maintain a list of Committee members. The appeals manager shall select Committee members for each appeals hearing from this list.

#### **5. The Committee Clerk**

- 5.1 A clerk will assist the Committee at every appeal. The role of the clerk is to assist the Committee in performing its functions. As well as making arrangements for appellants and their representatives who attend the appeal, the clerk will be able to provide information requested by the Committee.
- 5.2 The clerk will keep a record of the appeal and will record the decision. However, it is the Chair's responsibility to draft the final decision and forward this to the clerk for distribution to the appellant and respondent.
- 5.3 The clerk will not take part in the decision making process.

#### **6. Declaring an interest**

- 6.1 It is the responsibility of each member of the Committee selected for a hearing to declare an interest to the clerk as soon as the Committee member identifies the interest or considers that an interest may exist.
- 6.2 A Committee member must declare an interest or a possible interest if:
  - a) they or their organisation are instructed by a co-defendant in the same VHCC or a linked case; or
  - b) they have anything more than a passing friendship or relationship with any of the parties involved in the appeal; or
  - c) they have employed any of the parties involved in the appeal in the recent past; or
  - d) they are involved with any of the parties involved in the appeal in any other way; or
  - e) they or their organisation stand to gain direct benefit from the appeal outcome.
- 6.3 If any member of the Committee declares an interest, that Committee member must immediately withdraw and return the appeal bundle. If an interest is declared on the day of the appeal hearing, the appellant and/or respondent has the right to insist that the Committee member shall not hear the appeal.
- 6.4 The clerk shall record the names of any Committee member who has declared an interest.

## 7. The appeal hearing

- 7.1 Appeal hearings will usually take place at the LSC's offices in London. There may be circumstances where ~~video conference~~ **videoconference** is used. The Committee, appellant and respondent will be informed of such arrangements.
- 7.2 Prior to the appeal hearing, the Committee will have been provided with copies of the appeal bundle consisting of:
- the Defence Team's appeal representations;
  - the CCU's appeal response;
  - case summary;
  - indictment; and
  - any other supporting documentation.
- 7.3 Where appellants wish to provide material that is not included in the original appeal bundle, this extra material should be provided, in the form of written submissions and supporting documentation, to the CCU, at least three working days in advance of the appeal hearing. If the appellants do not do this, but still seek to rely on fresh material, the CCU has the right to ask the Committee:
- a) to grant more time so that the CCU can consider and respond to the fresh material; or
  - b) to proceed with the appeal relying only on information provided in the original appeal bundle.
- 7.4 The Committee shall adjudicate the issue having regard to the interests of justice and the need to proceed expeditiously.
- 7.5 The Committee may request further information to be provided prior to the appeal hearing. If further information is provided and the appellant, the respondent and/or the Committee require additional time to consider (and if required, respond to) such further information, the appeals manager will be asked to reconvene the appeal hearing (if necessary) at the next available opportunity.
- 7.6 The Committee may ask the appellant and the respondent to attend the appeal hearing and may invite either party to provide further oral submissions. Any oral submissions must be based solely on the appeal grounds as set out in the appeal bundle.
- 7.7 The appellant and/or the respondent are entitled to instruct another party to represent them at the appeal hearing but in doing so accept any cost involved in instructing such representative. For the avoidance of doubt, the CCU/LSC will not pay for the cost of representation. The appellant must notify the appeals manager no later than ten working days prior to the appeal hearing if they are to be represented at the hearing.
- 7.8 If either the appellant or the respondent does not attend the appeal hearing, the Committee may consider the appeal based solely on the papers contained within the bundle and make their decision accordingly.

- 7.9 Prior to and at the appeal hearing, the Committee may consider the following:
- a) this Contract;
  - b) the Defence Team's appeal representations;
  - c) the CCU's appeal response;
  - d) the case summary;
  - e) the indictment;
  - f) any other supporting information; and
  - g) any oral submissions made at the hearing.
- 7.10 If, by oral or written submission, any information is provided by either the appellant or the respondent at the appeal hearing that has not previously been provided, then either party has the right to request an adjournment of the appeal hearing. Unless there are exceptional circumstances that preclude an adjournment, the Committee should grant the request and allow a reasonable amount of time to consider the further information.
- 7.11 In making their decision on the appeal, the Committee may not take the following into consideration:
- a) earlier Committee decisions;
  - b) earlier decisions made under any other LSC committee hearing; and/or
  - c) decisions made by Contract Managers for co-defendants on the same VHCC.
- 7.12 Following all submissions, the Committee may:
- a) dismiss the appeal;
  - b) allow the appeal in whole; or
  - c) allow the appeal in part.
- 7.13 The decision of the Committee will be a majority decision. Where there is no majority, the Chair will have a second or casting vote. The decision of the Committee shall be final and binding on all parties. There is no further internal right of appeal.
- 7.14 The Committee shall give full, written reasons for its decision. If required, the Committee clerk may ask the Committee to provide further written information in support of the reasons for its decision.
- 7.15 Decisions made by a Committee do not set a precedent for any future Committee but may be used-produced by the appellant or the respondent ~~to support at~~ their appeal representationshearing.

## ANNEX 15

### COMPLAINTS

This Annex sets out the procedure regarding complaints made:

- ~~---~~ about the CCU by Panel Members and/or any other individual members of their Defence Teams; and
- ~~---~~ about Panel Members and/or any other individual members of their Defence Teams by the CCU.

#### 2. What is a complaint?

- 2.1 A complaint is an expression of dissatisfaction about the service provided by one party to another.
- 2.2 A complaint is to be differentiated from someone simply having a heated conversation or 'letting off steam'. A complaint is more serious than that; it is where one party has decided to lodge a formal complaint against the other.
- 2.3 Complaints should also be differentiated from appeals under this Contract see clause {28}.

#### 3. How may complaints be made?

- 3.1 Complaints may be made:

- ~~---~~ by letter;
- ~~---~~ in person;
- ~~---~~ by telephone;
- ~~---~~ by fax; or
- ~~---~~ by e-mail.

- 3.2 Complaints must be clearly marked "complaint" on the face of the correspondence, if made via correspondence. If the complaint is made verbally (i.e. in person or over the telephone), the complainant must make it clear during the conversation that s/he is making an actual complaint and not simply 'letting off steam'. Oral complaints must be followed up by putting the complaint in writing and submitting the written complaint to the 'complaints administrator'.

#### 4. Procedure for handling complaints

- 4.1 Once a complaint is received, the party receiving the complaint will check that it is a formal complaint (i.e. that it is clearly marked "complaint" in the correspondence or was stated to be a complaint during the conversation).
- 4.2 If it is not a formal complaint, the correspondence / verbal communication should be handled reasonably, responsibly and in the most appropriate way.
- 4.3 If the complaint is a formal complaint, the following procedure must be followed:
  - 4.3.1 An administrator will identify the complaint as a formal complaint on receipt.

4.3.2. All written complaints will be forwarded to a 'complaints administrator', who will register the complaint in a 'Complaints Log'. This will comprise of a spreadsheet showing:

- the date of the complaint (i.e. date of conversation or letter);
- the date the complaint was received (i.e. date letter received);
- the complainant;
- the complainant's organisation;
- the person against whom the complaint is made and where they are based;
- the particular VHCC the complaint refers to (if relevant);
- a brief summary of the complaint; and
- the action requested by the complainant (if any).

The Complaints Log will contain further columns which will be completed at a later stage:

- the date the complaint was passed to the relevant line manager;
- any holding letter sent (and the reasons why);
- the date the response was sent;
- by whom;
- a summary of the response (including the deadline for any corrective action); and
- (if relevant) the date the response was sent (and by whom) confirming that the corrective action had been completed.

4.3.3. The complaints administrator will pass the complaint to an appropriate person, who will then consider, investigate and respond to the complaint by the deadline given to them by the administrator. The appropriate person will be the line manager of the person who is the subject of the complaint. In the case of a complaint being made against the CCU by a Panel Member, the procedure is as follows:

<b>Complaints made against:</b>	<b>Response by:</b>
Contract Support Officer	Contract Manager
Contract Manager	Senior Contract Manager
Senior Contract Manager	Regional Manager
Operations Manager	Head of CCU
Regional Manager	Head of CCU

4.3.4. In the case of a complaint being made against a Panel Member by the CCU, the Panel Member must put in place an appropriate procedure, so as to ensure that a line manager investigates and responds to the complaint.

4.3.5. Complaints must be responded to in writing within three working days of receipt of the complaint (not three working days from the date the complaint is forwarded to the person who shall respond to it).

4.3.6. If the person compiling the response is unable to finalise that response within three working days (e.g. due to holiday/ sickness), the complaints administrator will contact the complainant immediately explaining why this is and giving a revised deadline for the response (which shall be reasonable and as soon as practically possible).

- 4.3.7. A written response will be forwarded to the complainant by the deadline. If appropriate, the response will contain proposals for corrective action and a deadline by which this will be achieved.
- 4.3.8. If no corrective action is proposed, the complaint will be closed when the response is sent to the complainant, and the result logged in the Complaints Log (i.e. the date the response was sent, by whom and a summary of the response).
- 4.3.9. If corrective action is proposed, the complaint will be closed when the corrective action has been finalised, a letter sent to the complainant confirming this has been done, and the result logged in the Complaints Log.

**ANNEX 16**

**CONTRACT AMENDMENT NOTICE**

<b>Contract Amendment Notice number:</b>	
<b>Date of Contract Amendment Notice:</b>	
<b>Effective date (date amendment comes into effect):</b>	
<b>Details of amendments to the Contract</b> (Minor changes will be listed in this box. If the amendment involves substantial changes to the text of the Contract, the relevant pages, showing the changes in “tracked changes” will be attached to this Notice; any new Annex will be attached to this Notice, stating which Annex it replaces):	
<b>Signed:</b>	..... Contract Manager On behalf of the Commission

## ANNEX 17

### TUPE

- 1.1 You and we acknowledge and agree that it is unlikely TUPE will apply to this Contract or on the termination of this Contract.
- 1.2 If, however, TUPE does apply at the commencement of this Contract, you shall be responsible for all emoluments and outgoings in respect of any transferring employees, including without limitation all wages, holiday pay, bonuses, commission, payment of PAYE, National Insurance contributions, pension contributions and otherwise, from and including the transfer date.
- 1.3 We agree to reimburse you for any redundancy payments you cannot avoid as a result of TUPE applying to the commencement of this Contract and employees consequently transferring.
- 1.4 We do not believe TUPE will apply on the termination of this Contract or part of it and that you will retain responsibility for all of your personnel on termination, as we do not believe that there will be an identifiable transfer of your business to any other provider (or new panel member) on such termination. ~~However, we reserve the right to make such amendments to this Contract as we may regard as desirable, if at any time we consider that TUPE may apply on any such termination, in order to comply with clause 30, subject to our compliance with the provisions on 'Amendments to the Contract'.~~

## **ANNEX 18**

### **EXTRACTS OF THE GENERAL CRIMINAL CONTRACT APPLICABLE TO VHCC WORK**

Please see separate Annex 18(1) or 18(2) as applicable.

## **ANNEX 19**

### **QUALITY STANDARDS: SPECIALIST QUALITY MARK**

Please see separate Annex 19.