

Notice of Amendments to the General Criminal Contract – June 2003

The changes to the Contract Standard Terms detailed in Section 1 below take effect from 4 August 2003. The amendments to the Contract Standard Terms create the Contract Standard Terms 2003. The changes to the General Criminal Contract Specification and the Duty Solicitor Arrangements 2001 set out in Section 2 below take effect from 21 July 2003. Changes to extracts of existing text are shown in underline and strikeout.

1. Amendments to the Contract Standard Terms

These amendments are made for the reasons set out below and bring the General Criminal Contract into line with changes made to the General Civil Contract that took effect in April 2003.

Fundamental Breach

The new provision in the Contract Standard Terms, specifying that the Commission may terminate the Contract where the contractor has committed a “Fundamental Breach” of contract, and describing Fundamental Breach (in Guidance in the Specification), is necessary because the Commission has identified some Contract Work that is so bad that, in clients’ interests, the Contract should be terminated quickly and because a small minority of contractors have, in breach of Contract, overcharged for their work by such an extent that termination without delay is justified.

Official Investigations

The amendments connected with Official Investigations are necessary as, under the framework set up under the Access to Justice Act 1999, most requirements are now imposed by contract rather than regulation and to ensure that the Commission may terminate a contract following a report where e.g. there has been dishonesty or professional misconduct and termination is justified.

Drafting Improvements

The amendments relating to “franchise contract”, “CDS Supplier”, late notice and to clause 20.2 are primarily drafting improvements.

Exclusion of personnel

The amendment relating to Clause 22.9 relating to the exclusion of personnel extends our power to exclude personnel from Contract Work to those who have been subject to previous Contract Sanctions, including while in another firm. This will prevent a situation whereby for example, a supplier has a Contract terminated because of risk to clients but then immediately goes off to work for another contractor. The Commission can only exercise this power when it is necessary to protect clients' interests or to protect the Commission from material harm.

Contract Notices & Internal Reviews

The current process whereby appeals against Contract decisions go to internal review by the Supplier Development Group and then to the Contract Review Body, with a separate process and time limits for each, can be slow and unnecessarily bureaucratic for both suppliers and the LSC. The changes to Clauses 23.7 and 23.9 therefore give the Supplier Development Group the right to refer the case straight on to the Contract Review Body if they are not minded to grant the internal review. SDG may still look at cases, to ensure consistency, but this will be an informal step. The amendment to Clause 23.1 is to clarify that there is no right of internal review etc against the issue of a contract notice unless a contract sanction follows.

Amendments

Clause 1.1 – Amend existing definition:

““CDS Supplier” means an office of a firm of solicitors in respect of which it holds a General Criminal Contract or an office of the Salaried Defence Public Defender Service;”

Clause 1.1 – Add a new definition:

““Fundamental Breach” means a serious breach of this Contract, which may be further described in Guidance in the Specification;”

Clause 1.1 - Amend the definition of 'Official Investigation' as follows:

“Official Investigation” means any investigation (of which you are aware) (a) into suspected serious professional misconduct, breaches of the Act (or the Legal Aid Act 1988) or regulations, or dishonesty by you or your personnel, being carried out by or authorised by (i) any organisation (such as in the case of a contractor which is a firm of solicitors, the Office for the Supervision of Solicitors) which is responsible for regulating or disciplining you or your personnel or (ii) the Legal Services Commission’s Investigation Section; or (b) any investigation (of which you are aware) by the police into suspected criminal offences relevant to your operations; or (c) any investigation (on reasonable grounds) by the Legal Services Commission’s Investigation Section into suspected serious breaches of this Contract (that would be grounds for termination).”

Clause 1.18 – Amend as shown below:

“Where Regulations refer to a “franchise contract” that reference includes this Contract (so that this Contract is a franchise contract for the purposes of the Regulations). This Contract is governed by English Law.”

Clause 17 – Add a new Clause 17.4:

“What if a notice is given late?”

If a notice or other information under this Contract specifies that it takes effect on a date before any required notice period has expired, the notice or information remains valid but does not come into effect until the expiry of the required notice period.”

Clause 20.2 – Amend as shown below:

“We may (without limitation) end this Contract as provided by its terms. The main provisions for termination are set out in this Clause 20.”

Clause 20.4(b) – Amend as shown below:

“You are under Official Investigation or we receive a Report and, in either case, consider that termination is required to protect Clients or us from possible serious harm or to protect public funds or Clients’ interests, or if a Report identifies that there has been such a serious breach of Contract or of legislation or such serious professional misconduct or dishonesty that, in all the circumstances, termination is justified.”

Clause 20 – add a new Clause 20.9:

“Termination for Fundamental Breach

“If you have committed a Fundamental Breach, we may serve a notice on you terminating this Contract (or any part of it) with effect from the date specified in the notice.”

Clause 22.10 - Amend as shown below:

“If any of your personnel (including partners and directors) is, or has been, a cause or subject of an Official Investigation, ~~or a Report or Contract sanction~~ while they were with you, or the cause or subject of such a, or any similar, investigation, ~~or report or sanction~~ while they were with any other ~~Contractor~~ supplier of legal services (whether or not you or the other Contractor were a Contractor at the relevant time) we may, if we reasonably consider that such a step is necessary to protect Clients’ interests or to protect us from material harm, require that the person concerned shall not (for such period as we may reasonably specify) (a) be a supervisor of Contract Work; ~~or and~~ (b) shall not be involved in your performance of Contract Work ~~for such period as we may reasonably specify.”~~

Clause 23 - Add a new sentence at the end of Clause 23.1 as shown below:

“For the purposes of this Clause 23, alleged breaches of this Contract do not include any alleged breach relating to the issue of a Contract notice unless and until we subsequently apply a Contract sanction consequent on the notice.”

Clause 23.7 - Amend as shown below:

“If the Regional Director receives a request for an internal review pursuant to Clause 23.6, he will, within 7 days of receipt, forward it to the Supplier Development Group. ~~which~~ The Supplier Development Group will, within 14 days of receipt, either (a) review the decision in the light of the information available including the reasons for the decision and your reasons for disagreeing with it or (b) where the dispute is within Clause 23.2, may refer it to the secretary to the Contract Review Body, as an application for a review by the Contract Review Body, in which case, Clauses 23.13 to 23.15 shall apply. The Supplier Development Group will not consider any documents that you have not already seen.”

Clause 23.9 – Amend as shown below:

“On an internal review, the Supplier Development Group may uphold the original decision, overturn the original decision or substitute a fresh decision for the original decision. ~~The Supplier Development Group~~ and, if it does so, it will give written reasons for its decision.”

2. Amendments to the Specification

(i) Cost Assessment

Changes are made to Part C Rules 1.1, 1.2, 1.10 and 1.11 of the Specification to codify the principles of sample based auditing. The changes will apply from 21 July 2003, although further guidance on the operation of Rule 1.10 is being consulted upon with the Law Society and other representative bodies and will be incorporated into the Specification thereafter.

Part C Rule 1.1 Assessment and Information to be retained on file

“Each file assigned a unique file number (UFN) shall contain the following information:

- (a) a copy of the original application for Advice and Assistance or Advocacy Assistance, where applicable, and any subsequent applications for a further Authorised Level of Service (excluding an application for a Representation Order);**
- (b) a breakdown of the work undertaken within each Unit of Work in respect of which payment is claimed in accordance with Part E of this Specification;**
- (c) the dates on which each item of work was done, the time taken, the amount claimed and whether the work was done for more than one Client;**
- (d) a list of any Disbursements claimed, the circumstances in which they were incurred and the amounts claimed;**
- (e) the original Representation Order, together with any amendments (where relevant);**
- (f) supporting invoices, receipts, vouchers and grants of prior authority or extensions to the upper limit (where relevant);**
- (g) a record of any fees agreed with Counsel; and**
- (h) details of any special circumstances relevant to the Assessment.**

The relevant Regional Director may assess the Claim (either before or after the credit in relation to that Claim has been given) as to the reasonableness of the work done in accordance with Rule 1.13 in this Part. Where an Assessment is carried out after a credit has been given in relation to any Matter or Case, then that credit may be adjusted accordingly.

1. The above information may be called for by the Regional Director for the purposes of Assessment. It will also be required for audit.
2. ~~Assessment of the reasonableness of the work done, shall be carried out either on an individual basis (using the Claim form and, where appropriate, the file) or via an audit process (with findings applied across a number of Matters or Cases) at our discretion. The setting off of credits against your Standard Monthly Payments will be without prejudice to our right to assess.~~
3. Although we have the right to assess every case that you claim for, we will normally assess a sample of your Claims and apply those findings by way of Assessment to other files instead. This is to avoid the cost and delay to both you and us that would be caused by our assessing every individual case.”

Part C Rule 1.2 Time Limit for Submission of Claims

“Subject to Rules 1.4 and 1.7 of this Part, at the conclusion of any Matter or Case or Duty Period, you must submit a Claim for costs to the relevant Regional Director on the Contract Work Report Form (CWRF). ~~The Claim must be submitted in a format approved by us. claiming an amount to be reconciled against the payments made to you under the Contract (a “credit”). The Claim must be submitted on a form and in a format approved by us. Credits claimed will be set off against the Standard Monthly Payments.~~ The UFN must be inserted on each Claim, except where a Claim for court Duty Solicitor Work is made in which case the relevant part of the CWRF should be endorsed. You must retain the information specified in Rule 1.1 of this Part on file. We may call upon you to produce this either for audit or Assessment purposes. You shall supply such further particulars, information and documents in support of your Claim as we may require.”

Part C Rule 1.10 Applying Findings Generally on Assessment

~~When, in carrying out any Assessment under Rule 1.1 of this Part, if the relevant Regional Director is of the opinion that the same or substantially the same issue (whether of fact or of principle) applies to any other Matters or Cases, the Regional Director may make a finding on that issue and apply that finding to the Assessment of all such Matters or Cases.~~

“When we Assess a sample of Claims, we may apply any findings to your other Claims for payment for Contract Work.

When we apply findings in this way, we may do so for all cases commenced under this Contract (or any previous contract it has replaced) where costs have been claimed from us either:

- (a) in the case of mis-claiming, since the date permitted by Clause 12.B.9 of the Contract Standard Terms;
- (b) in the case of over claiming or other claiming issues:
 - (i) since the date of the last contract compliance audit, or
 - (ii) from a date 12 months immediately preceding the Assessment,

whichever is the most recent.

“Mis-claiming” is defined as claiming in a manner that is clearly contrary to a specific rule in the Contract and where no discretion arises as to payment. For instance, claiming the wrong rates, failing to claim post charge Advice and Assistance provided on the same Case as part of the standard fee or claiming for Advocacy Assistance outside the scope of the Contract.

“Over claiming” is defined as claiming more than we determine to be reasonable on Assessment under Part C Rule 1.13, but where discretion arises as to the amount allowable. For instance, claiming one hour for an attendance where on Assessment we consider that 30 minutes is reasonable or claiming a Disbursement where we consider that it was not reasonably incurred.

‘Findings’ for these purposes include not only findings on particular practices (such as failing to assess financial eligibility or charging for administrative work that is not allowable) but in relation to more general matters, such as claiming excessive time for preparation or attendances.

If the sample relates only to a specific group of your files or Unit or Class of Work, then we will only apply the findings to that specific group.

When findings are applied to a Claim under this Rule, then that Claim has been assessed by us.”

Part C Rule 1.11 Appeals

“If you are dissatisfied with any decision of the Regional Director as to the assessment of the costs of Contract Work, you may within 21 days of notification of the decision make written representations to the Costs Committee by way of an appeal. The Costs Committee shall ~~redetermine~~ review the Assessment whether by confirming, increasing or decreasing the amount assessed. The Costs Committee may apply their findings generally across files outside of the sample before them under the terms of Rule 1.10 in this Part. ~~may direct that its decision shall apply to any other of your Claims which raise the same or substantially the same issue, provided always that~~ However, no such decision shall apply retrospectively to any completed Assessments which you have not appealed within the time limit.

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

1. Where you are appealing a number of Assessments, (particularly if your appeal is based on a finding by the Regional Director in accordance with Rule 1.10 of this Part), then the Costs Committee may be asked to deal with the appeal in relation to one or more sample assessments and to direct that their decision shall apply in relation to some or all of your other outstanding assessments. This prevents a large number of appeals which raise similar~~substantively the same~~ issues from coming before the Costs Committee and reduces the administrative cost to both you and us.
2. When an appeal is submitted, the Regional Office will prepare an agenda for the Committee. Either you or the Regional Director may make further written submissions as to the Assessments or the basis of the appeal prior to the hearing.
3. There is a right for either you or the Regional Director to attend or be represented on the appeal. If you wish to attend, you must give notice when you submit your written appeal (i.e. within 21 days of receiving the costs assessment decision.) If we wish to attend, we must give notice when the agenda is sent out. We will not exercise our right to attend in every case, and will only do so in any event if you have indicated that you will attend the hearing.
4. The purpose of our attendance will be to respond, during the hearing, to any request for clarification of our decision by the Committee or to any representations made by you. Our representative will not be present during any “in camera” deliberations by the Committee.
5. For the avoidance of doubt, nothing in this Rule relates to the presence at the Committee of a clerk supplied by the regional office to carry out administrative functions under the Review Panel Arrangements 2000.”

(ii) Fundamental Breach of Contract

These amendments broadly mirror those made under the General Civil Contract from April 2003. Add the following as Part G to the Specification:

“Guidance on Contract Sanctions

1 General

The Commission will take a responsible and proportionate approach to the application of Contract sanctions, consistent with its public functions.

1. This Guidance is descriptive. It does not attempt to define every different type of breach or when sanctions always will, and always will not, be applied, but gives examples. Given the range of situations that might arise, a definitive approach would not be practicable. As the Guidance is descriptive, it applies to similar situations in similar ways.
2. At its simplest, the purpose of Contract sanctions is to protect clients and public funds and to ensure that Contracts are held only by organisations that comply with them. The more serious the breach of Contract and the longer it has continued, the more serious the appropriate Contract sanction is likely to be, and vice versa.
3. While we recognise that the termination of a Contract may have serious consequences for the Contractor, we must have regard to clients’ interests and ensure the provision of competent, and value for money, legal services for publicly funded clients. Removing Contractors that fail to meet acceptable standards allows those that are performing well to expand.
4. Any Contractor may, occasionally, fail to comply with the Contract requirements in a minor way. This would not normally give rise to Contract sanctions unless, for example, the breach caused a financial loss, which might be recovered by a sanction. Issues would be addressed by informal discussions (or correspondence) between the Contractor’s Quality Representative and the Commission’s Account Manager, at any time, or by more formal discussions and the audit report, after an audit. This is part of normal Contract management.
5. When, on audit, we find non-compliances with the SQM, the Contract specifies detailed procedures to be followed. However, if we find other breaches of the Contract, on audit or otherwise, the procedures depend on the seriousness of the breach.

6. More serious breaches of Contract (apart from those relating to the SQM) will normally result in the issue of a notice, under Clause 20 of the Contract Standard Terms and, perhaps, a sanction under Clause 22. We will normally issue a notice when we consider that the breach is so serious that termination, or another sanction, will be justified if the breach is not remedied, or if it is repeated.
7. However (as under the common law) in some circumstances a breach may be so serious that it amounts to a breach that entitles us to end the Contract without issuing a notice. In this Contract, such a serious breach is referred to as a Fundamental Breach.

Fundamental Breach

8. Fundamental Breaches of this Contract include:
 - a breach of a provision that is so important that breach of it justifies termination (Fundamental Breach 1);
 - more than one breach which, together, are so serious that termination is justified (Fundamental Breach 2);
 - one or more breaches, from which we may reasonably infer that performance will continue to be so substandard as to justify termination (Fundamental Breach 3); and
 - dishonesty (Fundamental Breach 4).

Fundamental Breach 1: Examples of a breach of a provision that is so important that breach of it justifies termination

EXAMPLE

9. Clause 2 of the Contract Standard Terms provides that the Contract is personal to the Contractor, who must not assign it or sub-contract etc.
10. Any breach of this provision is a Fundamental Breach. We must be able to select our Contractors after carrying out pre-contract enquiries and audits.

EXAMPLE

11. Clause 3 of the Contract Standard Terms requires Contractors to assist us in carrying out compliance audits e.g. by giving us access to their premises and by providing documents.

12. Any **refusal** of access, or **refusal** to provide documents, is a Fundamental Breach. Legal services under the Contract are not provided to the Commission, so we are not able to assess them as they are provided. We rely on auditing to determine whether what we have paid for is being provided as required, and to the appropriate standard.
13. Having established a system of accreditation (the SQM) the Commission is required, by the Act, to have the quality of the accredited services monitored and to withdraw accreditation from Contractors that provide services of unsatisfactory quality (Ss. 4(8) & 12(4) of the Act). Without access and documents, the Commission cannot do this properly.

Fundamental Breach 2: Examples of more than one breach which, together, are so serious that termination is justified.

Termination for Fundamental Breach 2 will normally be justified in such cases even if the Contractor takes corrective action, such as replacing relevant personnel.

There may be occasions when there has been a serious breach that, alone, would not justify termination but where there are also other breaches e.g. breaches of the SQM. In these circumstances the Commission may look at all the breaches together and may terminate if the other breaches “tip the scales” so that, considering the breaches overall, termination is justified.

EXAMPLE

14. Clause 3.2 of the Contract Standard Terms provides that “You must perform all Contract Work and exercise your Devolved Powers in a timely manner and with all reasonable skill, care and diligence. You must perform your obligations to record and report data accurately”.
15. A breach of this requirement may be identified by a number of routes e.g. an Official Investigation, a Contract Compliance audit, a SQM audit, or peer review. Peer review is a review of a Contractor’s case files by a practitioner who is skilled in the relevant area of law. If such a review or other evidence shows that there has been a serious failure to comply with Clause 3.2, there will have been a Fundamental Breach.
16. We will be likely to conclude that there has been such a serious failure where, based on a sample of files, the peer review or other evidence demonstrates that Contract Work has been conducted at a standard below that which clients are reasonably entitled to expect from a solicitor. Where a peer review or other evidence shows only occasional lapses below the required standard, we will normally either serve a Contract notice or write to the Contractor outlining our concerns. Occasional lapses below the required standard will not normally be a Fundamental Breach. Where the breach relates to the performance of Contract Work, the Commission will not usually rely only on the opinion of a non-legally qualified auditor but will normally obtain the opinion of a peer reviewer before forming a view.

EXAMPLE

17. Part C Rule 1.13 of the Contract Specification provides “... you may only claim for work that has been reasonably done in accordance with the provisions of the Contract and that is supported by appropriate evidence on file”
18. The Commission makes payments to Contractors on the basis of information they have provided. It needs to ensure that such payments have been properly made. It is accountable for its expenditure and has a statutory obligation to aim to secure the best possible value for money (Ss.5(7) & 18(3) of the Act).
19. Through its auditing, the Commission has identified some Contractors that have been significantly over claiming. The Commission accepts that there may be legitimate differences of opinion as to the amount properly payable for a case. However, for these disputes, the Contract provides rights of appeal, concluding with consideration by the Costs Committee, membership of which is drawn from a panel of independent solicitors.
20. Under the Contract, we carry out Contract Compliance audits, during which batches of case files, and the claims for costs made on them, are assessed. The batches are of such a size as to be indicative of the Contractor’s work. This process results in Contractors’ batches of costs claims being categorised. Contractors whose claims are assessed down by an average of 0% to 10% are “Category 1”, which means that, generally (and particularly where the assessment down is closer to 0% than to 10%) the difference between the claims and the assessment is within the scope of legitimate differences of opinion. Contractors whose costs claims are reduced by an average of more than 10% to 20% are “category 2” and those whose costs claims are reduced by an average of more than 20% are “category 3”. Neither category 2 nor category 3 is acceptable.
21. Any Contractor who is assessed as category 3 in one or more Units or Classes of Work will be sent a Contract notice. There may also be circumstances where assessment as category 2 will result in the issue of a notice, for example where there are persistent claims for an item that is not permitted under the Contract. Such over claiming is not acceptable but it is right that there should be an opportunity for corrective action. However, if the Contractor is assessed as category 3 a second time, termination will normally follow.
22. The Commission has identified a very small number of Contractors whose samples of files show over claiming by significantly in excess of 20%. Generally (but not always) we have found, at the same time, that the quality of Contract Work is poor. Such over claiming is a Fundamental Breach.

23. In respect of all costs assessments, the Contractor has a right of appeal to the Costs Committee. If a Regional Director's decision to terminate is made on the basis of over claiming, the Contract Review Body will not normally consider a review of the decision to terminate until after the Costs Committee has dealt with the relevant costs appeals.

Fundamental Breach 3: Examples of one or more breaches, from which we may reasonably infer that performance will continue to be so substandard as to justify termination.

In these circumstances, for Fundamental Breach 3, if a Contractor has already taken corrective action, such as replacing relevant personnel, we will take that into account in deciding whether there remains an inference that performance will continue to be so substandard as to justify termination.

24. Less serious breaches than those described as Fundamental Breach 2, which keep recurring and are such that the standard in Clause 3.2 has regularly not been met, may justify termination on this ground, because the continued recurrence indicates that such, or similar, breaches are likely to continue to recur. If so, we may reasonably infer that performance will continue to be so substandard as to justify termination. Where breaches relate to the performance of Contract Work, the Commission will not usually rely only on the opinion of a non-legally qualified auditor and will normally obtain the opinion of a peer reviewer before forming a view.

Fundamental Breach 4: Dishonesty

25. Dishonesty would normally justify termination of the contract under the common law. However, dishonesty is a Fundamental Breach.
26. On some occasions, we have found case files for which backdated, timed attendance notes have been created prior to an audit by personnel who did not have any real evidence as to whether an attendance had taken place or, if so, how long it took and who, therefore, were unable honestly to create them. Such attendance notes are false and such behaviour is dishonest and, unless the instances are isolated, will normally result in termination.
27. We have also found case files that have had backdated letters placed on them e.g. client care letters to, falsely, give the impression that the file was managed in accordance with the SQM. Such behaviour is also dishonest and, unless the instances are isolated, may result in termination.

Publication of Contract Decisions

28. The Commission may publish information about the Contract decisions it makes about Contractors (Clauses 13.6 & 13.7 of the Contract Standard Terms).

29. We do not intend to publish details of every Contract decision made. We will, however, publish (on our website or otherwise) the names and office addresses of any Contractor whose Contract we have terminated.
30. We will not publish the names of any Contractor that chooses to end their Contract before we have made a decision, unless there are exceptional circumstances.”

(iii) Other Amendments to the Specification

Part A Scope and Structure of Contract Work

Reason: To clarify that attendance at a post charge video identification procedure in the absence of the client is remunerable.

Amendment:

Part A Section 2 Criminal Investigations

In paragraph 2.2.1 amend the second bullet point as follows:

“The Client is required to attend a post-charge interview or identification procedure or is the subject of an identification procedure carried out by means of video recordings who is not present at a Police Station at the time the procedure is carried out; or”

Part B Rules and Guidance on Performing Contract Work

Reason: Amend Part B, Rule 3.3 to clarify that from 1 April 2003 probationary representatives can only work directly for a contracted supplier. This is to ensure that trainees receive appropriate supervision. Insert a new paragraph at the end of this rule to prevent a solicitor who shows continuing poor supervision of probationary representatives from continuing to act as a supervising solicitor, with a right of appeal to a regional duty solicitor committee. The purpose is to improve supervision of staff who are still in a trainee role.

Amendment:

Part B Rule 3.3 Use of Representatives

“Police Station Advice and Assistance may be given by a Representative.

In Own Solicitor cases, initial advice may be given by a Representative.

When you delegate work to a Representative who is not directly employed by your firm, i.e. under a contract of service, you must ensure that the individual is appropriately supervised and the Guidance below is complied with.

If we consider that you have failed to comply with the supervision requirement set out in this Rule then you are not entitled to payment under this Contract for any work which was not properly supervised.

A Probationary Representative may not provide Police Station Advice and Assistance on an indictable only offence.

From 1 April 2003, a Probationary Representative may only provide Police Station Advice and Assistance for the firm (which must hold a General Criminal Contract) at which his or her supervising solicitor is based.

A Representative shall not be employed as a special constable or in any other capacity that may cause a conflict of interest when undertaking criminal defence work.

If work is delegated to a Representative or agent who is not an employee of the firm, the travel time claimed shall not exceed 45 minutes each way.

A Solicitor may be suspended from acting as a supervising Solicitor for Probationary Representatives if serious shortcomings in supervision have been identified to you and remedial action has not been taken or is ineffective. If suspended, the Solicitor has a right of appeal to the regional duty solicitor committee under paragraph 7.13(d) of the Duty Solicitor Arrangements 2001.”

Reason: Delete the out of date reference to “DSS” In Part B, Rule 3.5 note 2 and anywhere else it appears (including Part B paragraph 6.2.2).

Amendment:

Part B Rule 3.5 Investigations by non – Police Agencies

“Note 2:...e.g. government departments, local authority, DSS, Post Office, SFO or Inland Revenue Fraud Investigators...”

Reason: Amend Part B Rule 7.1 to extend the restriction on provision of money or gifts by a solicitor to a client at the police station to clients in prison detention. The reason for this is that the Commission has received anecdotal information that a small minority of solicitors use inducements to attract new clients in prison detention.

Amendment:

Part B Rule 7.1 Cold Calling and Marketing

“Contracted legal services may not be marketed by means of unsolicited visits or telephone calls, whether by you or another person or body.

The marketing of contracted services via leaflets, letters or circulars should not be undertaken without our express permission.

A Solicitor or other Representative at the Police Station, prison or other place of detention must not provide any money or other gifts to a Client except items of refreshment and smoking materials for immediate consumption by the Client.”

Reason: Amend Part B, paragraphs 8.2.3 and 8.2.5(c) to enable a duty solicitor to arrange attendance at the police station as necessary. This is to allow greater flexibility to multi-office suppliers when deploying calls.

Amendment:

Part B, Section 8 Scope of Duty Solicitor Service and Service Obligations

8.2 Service requirements for Police Station Duty Solicitor Work

“8.2.3 You may accept a case referred by the Call Centre Service if the Duty Solicitor named on the Rota is unavailable for one of the reasons set out in paragraph 8.2.2 above but you have another Duty Solicitor available to accept the case without delay who is able to arrange attendance ~~attend~~ at the Police Station, if necessary, within 45 minutes.

8.2.5(c) a Duty Solicitor is available to make first contact with the Client immediately and is able to arrange attendance at ~~attend~~ the Police Station, if necessary, within 45 minutes.”

Reason: Amend Part B paragraph 8.4.1 to remove the reference in error to an accredited representative. Accredited representatives cannot cover duty solicitor slots.

Amendment:

8.4 Obligations of Contractors

8.4.1 “It is your responsibility to ensure that any Rota slot allocated to your firm or organisation in a Rota issued by the Commission is covered by you using a Duty Solicitor. ~~appropriately qualified and competent staff who are either a Duty Solicitor or, where appropriate, an Accredited Representative in the full time or part time employment of, or partner in, the same firm as the Duty Solicitor. For Guidance on what we mean by employment, see Subsection 8.7 below.~~ A Duty Solicitor may only be employed by one CDS Supplier (see the Duty Solicitor Arrangements 2001).”

Reason: Amend Part B, paragraph 8.4.2 to make it clear that a duty solicitor swap outside the supplier must be to a duty solicitor who is a member of the scheme to which the slot has been allocated.

Amendment:

8.4.2 “If your firm or organisation is unable to cover a Rota duty slot you may:

- (a) swap the duty with or give the duty to another Duty Solicitor employed by your firm CDS Supplier; or
- (b) swap the duty with or give the duty to another Duty Solicitor who is a member of the Local Scheme to which the slot has been allocated and is employed by a CDS Supplier;

and, where ~~(a) or (b)~~ the above applies you must notify:

- i. in the case of a Police Station Local Scheme, the Call Centre Service; or
- ii. in the case of a magistrates’ court Local Scheme, the magistrates’ court clerk,

of the details of the change as soon as possible, and when practicable to do so, at least 24 hours before the Duty Period is due to commence.”

Part E Remuneration under the Contract

Reason: Amend the standard fee table in Section 3.5 to enable a category 1 standard fee to be claimed where no evidence is offered and the case has not been listed and fully prepared for trial. The Costs Appeals Committee has recently noted that this situation currently is not catered for by the standard fee scheme.

Amendment:

Category 1	Category 2
1.3 proceedings (other than committal proceedings) which are discontinued or withdrawn <u>or where the prosecution offer no evidence.</u>	2.3 proceedings which were listed and fully prepared for trial in a magistrates' court but are discontinued or withdrawn or where the prosecution offer no evidence or which result in a bind over on the day of trial before the opening of the prosecution case.

Reason: Delete from Part E section 5.2 the rate for attending on assigned counsel which was reproduced in error. Counsel may not be assigned for Prison Law cases.

Amendment:

Delete the following line from the table in Part E section 5.2:

Attendance at court where Counsel assigned	31.95	31.95
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(iv) Duty Solicitor Arrangements 2001

The following amendments to the Duty Solicitor Arrangements are made:

Paragraph	Proposed Amendment	Reason
4.13 Final line	The Commission shall provide three months six weeks notice of the introduction of such special rules.	Three months notice is not provided once consultation is concluded. A minimum of 6 weeks consultation and then 6 weeks notice is provided in accordance with the Contract rules.
5.1(b)(ii)	Police Station Duty Solicitor Rota slots allocated cases referred to that solicitor, or, where cases are referred to a firm, a majority of the number of cases divided by the number of Duty Solicitors deployed by that firm; and	Under the existing wording duty solicitors may avoid undertaking any duties if they never have cases referred to them.
7.1	The Commission shall establish one or more Regional Committees for each of the Regions set out in Schedule 1. <u>The area covered by a Regional Committee may be amended by the Commission in consultation with the relevant Regional Committee.</u> The role of a Regional Committee is to:	This permits changes to be made, in consultation with the relevant regional committee, without the need to amend the Arrangements.
7.13	The following decisions of the Commission under these Arrangements may be the subject of appeal by an applicant for membership of a Local Scheme or by a Duty Solicitor: (a) a decision to refuse an applicant membership of a Local Scheme under Section 4 of these Arrangements; (b) a decision to remove or suspend a Duty Solicitor	This enables a regional committee to hear appeals from representatives who have been suspended or removed for “some other good reason”. It also enables a solicitor who the LSC does not wish to act as a supervising solicitor for probationary representatives to appeal (see amendment to Part B Rule 3.3 above).

	<p>from a Local Scheme under paragraphs 5.2 or 5.4 of these Arrangements-;</p> <p><u>(c) a decision to suspend or remove a police station representative under paragraph 6.4(v) of the Police Station Register Arrangements 2001;</u></p> <p><u>(d) a decision to suspend a solicitor from acting as a supervising solicitor for probationary representatives under Part B, Rule 3.3 of the General Criminal Contract Specification.</u></p>	
7.18	<p>The Regional Committee shall consider the application afresh in accordance with the relevant criteria in these Arrangements <u>using the most current guidance available</u> and the decision of the Regional Committee will replace the decision of the Commission.</p>	<p>This makes it clear that current guidance should be used</p>
Appendix I	<p>WEST MIDLANDS A Coventry Herefordshire Solihull Shropshire Telford & Wrekin Warwickshire Worcestershire</p> <p>WEST MIDLANDS B Birmingham Coventry Dudley Sandwell Shropshire Solihull Staffordshire Stoke on Trent Telford & Wrekin</p>	<p>Changes agreed by relevant regional committees.</p>

	Walsall Wolverhampton WEST MIDLANDS C <u>Staffordshire</u> <u>Stoke-On-Trent</u>	
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