

CONTRACT NOTICE OF AMENDMENT

AMENDMENTS TO THE GENERAL CRIMINAL CONTRACT

To be implemented from 31 October 2005

The contract amendments set out in this notice, which have been subject to consultation with The Law Society and other representative bodies, will be incorporated into the General Criminal Contract from 31 October 2005. The layout of this notice is explained in the explanatory notes.

Consultation began in December 2004 on contract amendments that were originally intended to be implemented from April 2005. These amendments were deferred until October 2005 and the Commission issued an outcome of consultation in June 2005. Consultation began in June 2005 on additional amendments to also be implemented from October 2005. Copies of the outcome of both consultations are available on the Commission's website at www.legalservices.gov.uk. In addition the Commission has consulted separately on some policy changes that have resulted in some of the amendments to the General Criminal Contract, namely, the CDS Direct Pilot and Police Station Representations and Solicitor Attending the Police.

Amendments to the Criminal Bills Assessment Manual are provided in Appendix 7 of this notice and are also effective from 31 October 2005.

The Police Station and Court Duty Solicitor Cost Assessment and Duty Solicitor Manuals have also been amended. A summary of amendments is provided in Appendix 8.

Revision marked versions of all manuals will shortly be available on the Commission's website.

1.0 Explanatory Notes

There follows a summary of all changes made to the General Criminal Contract. Due to the number of amendments, many affecting the same sections of the Contract, a different layout has been adopted for this notice. The amendments are provided in the order in which they appear in the Contract and are divided into appendices, for ease of reference, as follows:

- Appendix 1: Amendments to Contract Standard Terms
- Appendix 2: Amendments to Contract Specification – Part A
- Appendix 3: Amendments to Contract Specification – Part B
- Appendix 4: Amendments to Contract Specification – Part C
- Appendix 5: Amendments to Contract Specification – Part E
- Appendix 6: Amendments to Contract Specification – Part G

Amendments to the Criminal Bills Assessment Manual are provided in Appendix 7 and a summary of changes to the Police and Court Duty Solicitor Cost Assessment Manual and Duty Solicitor Manual is provided in Appendix 8.

Throughout this document changes are marked as follows:

- New/additional wording is underlined
- Deleted wording is struck through

2.0 Summary of Changes

2.1 CDS Direct Pilot

A number of amendments are necessary to the Contract in order to implement the CDS Direct Pilot from 31 October 2005.

CDS Direct is a pilot project to provide telephone advice to clients detained at the police station in specified situations.

For the Liverpool Region and the Boston Police Station Scheme CDS Direct will provide initial telephone advice in all cases, except those which are indictable only or where the time of interview/identification procedure is known at the time of the initial request.

Nationally, CDS Direct will be involved in cases that are restricted to telephone advice only.

For cases where a CDS Direct Advisor has provided telephone advice a Fixed Acceptance Fee may be claimed but no claim can be made for providing Police Station Telephone Advice.

Amendments to Contract Specification – Parts A, B and E

2.2 Police Station Accreditation

These amendments result from a consultation paper issued on 15 November 2004 concerning police station attendances. The proposals have since been extended to also include police station telephone advice. These changes are made to ensure

that advice is give by persons who are sufficiently qualified and are subject to transitional arrangements as detailed below.

The amendments require solicitors who do not hold the Police Station Qualification (PSQ) to undertake the accreditation process to obtain this qualification before undertaking police station attendances, or providing police station telephone advice, within the following time limits:

- 1 November 2005 to register on the Police Station Register
- 1 May 2006 to pass either the critical incidents test or the portfolio
- 1 November 2006 to pass both tests

The requirement for solicitors who do not hold the Police Station Qualification (PSQ) to undertake the accreditation process to obtain this qualification before undertaking police station attendances will not apply to a firm on the Serious Fraud Panel if the client has been arrested for a fraud offence.

Amendments are also made to require that the supervising solicitor for a probationary police station representative shall document the relevant dates by which the representative needs to have passed further tests and how supervision will operate.

Amendments to Contract Specification – Part B

2.3 Pre-Charge Bail Conditions

The Criminal Justice Act 2003 introduced a facility for the police to impose bail conditions pre-charge, which can be challenged in court. This change brings the related court proceedings into the scope of the Advocacy Assistance and the court duty solicitor schemes.

Amendments to Contract Specification – Parts A and B

2.4 Changes to Funding for Services Cases

The Commission facilitates certain work in relation to services cases and is then reimbursed by the Ministry of Defence. These amendments remove work outside England and Wales from the scope of the Contract which will instead be remunerated directly by the Ministry under existing arrangements.

Amendments to Contract Specification – Parts A and B

2.5 Disability Discrimination Act 1995

The Disability Discrimination Act 1995 places an obligation on service providers to make reasonable adjustments so that they can assist clients with disabilities. The supplier as service provider is therefore obliged to provide a sign language interpreter for clients who are deaf or hard of hearing, where it would be reasonable to do so. This amendment clarifies that the Commission will no longer pay sign language interpreters' fees except where they go beyond 'reasonable adjustments' under the Act.

Amendments to Contract Specification – Part C

2.6 Police Station Attendances

The Commission considers that some of the requirements to attend the police station are unnecessary in every case and that in particular youths and persons at risk could, in some circumstances, be advised over the telephone. The amendment

does not deny individuals legal advice but allows the advisor to consider whether or not it is necessary for there to be an attendance in the circumstances of the individual case. In some cases it may only be necessary to provide advice by telephone but where appropriate a legal advisor can attend and be paid providing the sufficient benefit test is met.

References to arrestable offences are made redundant by the Serious Organised Crime and Police Act 2005 and these amendments remove all such references.

Amendments are made to clarify that where travel time is capped for representatives who are not employed by the supplier, the fares and/or mileage should also be reduced accordingly.

Amendments have been made to provide flexibility in how checks are made as to whether a bail to return will be effective.

All of the above changes apply to both own solicitor and duty solicitor police station work.

Amendments to Contract Specification – Part B

2.7 Court Duty Solicitor

An amendment has been made to clarify the role of the court duty solicitor in relation to a client who has his or her own solicitor (e.g. under a Representation Order). Essentially he or she is treated as an unrepresented client if it is a non-business day and the own solicitor cannot be contacted (or it is unclear whether the client has his or her own solicitor).

An amendment has been made to make it clear that court duty solicitors have an obligation to check whether they are needed in order to reduce the time spent waiting at court.

Amendments to Contract Specification – Part B

2.8 Changes to Standard Terms

The Standard Terms contain requirements to notify the Commission of certain offences, which refer to arrestable and serious arrestable offences. The Serious Organised Crime and Police Act 2005 makes these terms redundant and therefore these references have been replaced with “offences punishable with imprisonment”.

Amendments to Standard Terms – Parts A and D

Two definitions, currently contained in Part E of the Contract Specification have been added to the Standard Terms for clarity.

Amendments to Standard Terms – Part A

The words ‘in all other respects’ have been deleted from Clause 12A.9. A similar amendment has been made to Clause 12A.9 of the Civil Standard Terms.

Amendments to Standard Terms – Part C

2.9 Other Amendments

Amendments have been made to clarify that Crown Court Representation is only remunerated under the Contract where the Commission has, in exceptional circumstances, granted a Representation Order.

Amendments to Contract Specification – Parts A and E

General Criminal Contract Amendments: 31 October 2005

Amendments have been made to clarify the use of devolved powers in civil cases. These have been included in the General Criminal Contract insofar as it is relevant to Associated CLS Work.

Amendments to Contract Specification – Part B

Information has been added to clarify when duty solicitor rates and duty solicitor serious offence rates apply.

Amendments to Contract Specification - Part E

An amendment have been made to give guidance on the disclosure of information that we consider may indicate that there is or has been professional misconduct.

Amendments to Contract Specification – Part G

The definition of a Very High Cost Case was amended, through regulation changes, in August 2004. An amendment has been made to update the definition in the Contract.

Contract Specification – Part B

An amendment has been made to confirm that holders of General Criminal Contract are authorised to provide representation in the Crown Court, Court of Appeal and House of Lords.

Contract Specification – Part A

Some minor errors have also been corrected.

Appendix 1: Contract Standard Terms

Standard Terms Part A: Introduction

Amend 1.1 by inserting the following definitions retaining alphabetical order:

““Business Day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a bank holiday under the Banking and Financial Dealings Act 1971.”

““Unsocial Hours” means between the hours of 5:30pm and 9:30am on any business day and any time on a day which is not a business day.”

Amend 1.1 by deleting the following definition:

~~““Serious Arrestable Offence” has the meaning given by section 116 of the Police and Criminal Evidence Act 1984.”~~

Amend Clause 3.20 as follows:

“Do you have to tell us about disciplinary and other proceedings?”

20. Immediately you become aware of them you must notify us (and provide details) of (a) any professional disciplinary proceedings and (b) any criminal charges in relation to any alleged ~~Serious Arrestable Offences~~offence punishable by imprisonment that might be relevant to the performance of Contract Work or any alleged offence of dishonesty or deception concerning (i) you, (ii) any of your personnel who have been, or may be, involved in Contract Work (iii) any of your partners, (iv) any of your directors.”

Standard Terms Part C: Contract Work

Amend Clause 12A.9 as follows:

“When must you pay third parties?”

9. Subject to Clause 12A.12 you must pay any third parties whom you instruct in connection with Contract Work within three months of submitting any Claim to us that includes their charges and, ~~in all other respects~~ in accordance with the terms of your agreement with them. If you fail to pay a third party in accordance with this Clause 12A.9, we reserve the right to pay the third party and deduct the amount of the payment from any monies payable from us to you under this Contract. We will not do so without first giving you at least 14 days notice, in which you may either confirm to us that you have made payment or demonstrate to our reasonable satisfaction that you have reasonable grounds for not making payment (at present).”

Standard Terms Part D: General Terms

Amend Clause 18.15 as follows:

“Notification of Criminal Proceedings

15. You must notify us within seven days if any criminal proceedings for an ~~arrestable~~ offence punishable with imprisonment are commenced against any of your partners, members or directors.”

Appendix 2: Contract Specification Part A Scope and Structure of Contract Work

1. Introduction

Insert the following new paragraph after paragraph 1.2.4:

“5. For the purposes of Regulation 13(1)(b) of the CDS (General) (No. 2) Regulations 2001 (and subject to Regulations 13(2) and 11 of those Regulations) you are authorised to provide representation in the Crown Court, Court of Appeal and House of Lords (this Contract being a crime franchise contract for the purposes of those regulations) and, in providing such representation, must comply with this Contract.”

2. Criminal Investigations

Amend Paragraph 2.2.1 (b) as follows:

- “1. (b) **Police Station Telephone Advice**, that is telephone Advice and Assistance, where there is no attendance at the Police Station, to a Client who:
- i) is arrested and held in custody at a Police Station; or
 - ii) is a Volunteer; or
 - iii) is being interviewed in connection with a Serious Service Offence; or
 - iv) is detained under Schedule 7 of the Terrorism Act 2000.

except that, during the CDS Direct Pilot, all CDS Direct Pilot Cases are excluded from such Police Station Telephone Advice (and no payment in respect of them will be made) - see Part B Section 9.”

Insert new paragraph 2.2.1(f):

“(f) **Advocacy Assistance** in the magistrates’ court in connection with an application to vary bail conditions imposed by police under Section 47 (1E) of the Police and Criminal Evidence Act 1984, as amended by the Criminal Justice Act 2003.”

Insert new paragraph 2.2.2 as follows:

“2. This Class of Work does not include any matter in connection with an investigation by Services Police where an attendance takes place outside England and Wales.”

3. Criminal Proceedings

Amend paragraph 3.2.1(d) as follows:

- “(d) Advocacy Assistance (or Representation pursuant to a Representation Order granted by the Commission) in the Crown Court:”**

Appendix 3: Contract Specification Part B Rules and Guidance on Performing Contract Work

1. General Rules – All Authorised Levels of Service

Add new paragraph after 1.5 as follows:

“1.6 Amendments Implemented from 31 October 2004 and 31 October 2005

There are no transitional provisions for the amendments set out in the Contract Amendment Notices that took effect on 31 October 2004 and 31 October 2005 and which are summarised in the table below. Each amendment applies to all work performed from the relevant implementation date.

<u>Amendment</u>	<u>Implementation Date</u>
<u>Duty Solicitor serious offence rates (Part E, paragraph 2.2)</u>	<u>31 October 2004</u>
<u>Amendments applying to the CDS Direct Pilot, CDS Direct Pilot Cases and Former CDS Direct Pilot Cases (Part B, Sections 8 and 9, Part E, paragraph 2.2)</u>	<u>31 October 2005</u>
<u>Cap fares/disbursements where travel time is capped to 45 minutes (Part B, paragraphs 3.3 and 8.2.11)</u>	
<u>Application to vary pre-charge bail conditions (Part A, paragraph 2.2.2 (f))</u>	
<u>Applications to vary pre-charge bail conditions added to scope of Criminal Investigations and service requirements for court Duty Solicitor cases (Part A 2.2.2 (f) and Part B, paragraph 8.3.2)</u>	
<u>Services work outside England and Wales removed from scope (Part A, paragraph 2.2.2)</u>	
<u>Change to Service Requirements for Court Duty Solicitor cases (Part B, paragraph 8.3.6)</u>	

3. Police Station Advice and Assistance – Own Solicitor

Amend 3.3 as follows:

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 requirements 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. Where this rule is applied the fares and/or mileage claimed should not exceed that which would have been paid had the journey lasted less than 45 minutes.

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.

Add new paragraph 3.3.6

“6. A supervising Solicitor for a Probationary Representative shall document, within 7 days of the Representative’s inclusion on the Police Station Register:

- (a) the dates by which a further test needs to be passed at 6 months and all tests within 12 months to avoid suspension from the Register;
- (b) the process that the supervising Solicitor will use to ensure that the Probationary Representative’s work is quality assured.

Failure to comply with this requirement may be construed as a serious shortcoming in supervision justifying suspension as a supervising Solicitor.”

Insert new paragraph 3.7.1 and renumber remaining paragraphs accordingly and amend new paragraphs 3.7.2, 3.7.3 and 3.7.4.

“3.7 Service Requirements for Own Solicitor Police Station Advice and Assistance

1. Own Solicitor Police Station Attendances and Police Station Telephone Advice may only be undertaken by a Representative (including a Solicitor who is also a Representative) or:
 - (a) (for work done before 00.01 on 1 November 2005) any Solicitor;
 - (b) (for work done after 00.01 on 1 November 2005 but before 00:01 on 1 November 2006) a Solicitor who is on the Police Station Register and has not been suspended;
 - (c) (for work done after 00.01 on 1 November 2006) a Solicitor holding the Police Station Qualification under the Law Society’s Criminal Litigation Accreditation Scheme;
 - (d) (for work done on or after 00.01 on 1 November 2005, where the firm is a member of the Specialist Fraud Panel and the offence for which the client has been arrested is primarily or substantially based on allegations of fraud or other serious financial impropriety or involves complex financial transactions or records) a Solicitor.

- ~~12.~~ Subject to paragraph 3.7.~~23~~ below the following services shall be provided once a case has been accepted:
 - (a) attendance at the Police Station to provide advice and attend all police interviews with the Client where the Client has been arrested in connection with an ~~arrestable offence under section 24 of the Police and Criminal Evidence Act 1984;~~
 - (b) attendance at any identification parade, group or video identification or confrontation;
 - (c) attendance at the Police Station where the Client complains of serious maltreatment by the police;
 - ~~(d) attendance at the Police Station where the Client is a youth or person at risk;~~

- ~~23.~~ If exceptional circumstances exist which justify non-attendance at the Police Station, the Own Solicitor or Representative shall record his or her decision not to attend, including details of the exceptional circumstances and the reasons for the decision on the case file. Exceptional circumstances could arise if a Client expressly instructs the Own Solicitor or Representative not to attend. Exceptional circumstances are less likely to arise in the case of paragraphs 3.7.~~12~~(c) ~~and (d).~~

34. You shall only attend the Police Station when the Sufficient Benefit Test set out in Part B, Rule 2.5 is satisfied. The circumstances when this test will be satisfied include:
- (a) to provide advice prior to and during interview;
 - (b) to advise at an identification procedure (including a video identification procedure when the Client is not present);
 - (c) ~~when appropriate, to advise a Client who is a youth or person at risk;~~
 - (~~d~~) ~~—~~when appropriate, to advise on the implications of the caution when the Client is charged with an ~~arrestable~~ offence;
 - (~~e~~) to advise when the advice may materially affect the outcome of the investigation and goes significantly beyond initial advice;
 - (~~f~~) to advise a Client who complains of serious maltreatment by the police.”

Amend paragraph 3.7.9 (previously paragraph 3.7.8):

- “9. An attendance at the Police Station for an ineffective bail to return may be disallowed if ~~telephone~~ checks were not made prior to the attendance to establish whether it would be effective.”

6. Guidance on Specific Units of Work

Amend paragraph 6.2.4 as follows:

- “4. Prior to the grant of Representation, it may be necessary to apply for a variation of police bail conditions. This is covered by Advice and Assistance. Such an application can be made in writing unless there is good reason for you to actually attend at the Police Station to make oral representations. Advocacy Assistance can be used to apply for variation of bail conditions imposed by police under Section 47 (1E) of the Police and Criminal Evidence Act 1984, as amended by the Criminal Justice Act 2003.”

7. Supplementary Rules – all Authorised Levels of Service

Amend paragraph 7.3 as follows:

“7.3 List of Devolved Powers

Unless we otherwise direct, your Devolved Powers will be the powers to, as part of Contract Work:

- (a) accept an application from a child direct under Rule 1.2 in this Part which is entitled to begin, prosecute or defend proceedings without a litigation friend or on behalf of a child or patient under Rule 1.3(d) in this Part;
- (b) accept an application for Advice and Assistance or Advocacy Assistance by post from a Client resident outside England and Wales under Rule 2.1 of this Part;
- (c) accept an application for Advice and Assistance from a Client who has received Advice and Assistance from another Solicitor within six months under Rule 2.12 in this Part;
- (d) grant (or refuse) Advocacy Assistance under Rules 4.2, 4.5 and 4.6 of this Part;
- (e) authorise the instruction of Counsel when Advocacy Assistance is given in accordance with Rule 4.8 in this Part;
- (f) grant, refuse, amend or refuse to amend an emergency Certificate granted in the Associated CLS Class of Work (full Crime SQM holders only). This does not allow you to grant an application on the ground that the case has a significant wider public interest. Decisions on public interest are taken by the Commission (where necessary after referral to the Public Interest Advisory Panel);
- (g) amend or refuse to amend a limitation on a substantive Certificate issued in the Associated CLS Class of Work (full Crime SQM holders only). This does not allow you to amend on the ground that the case has a significant wider public interest. Decisions on public interest are taken by the Commission (where necessary after referral to the Public Interest Advisory Panel)."

Amend paragraph 7.12 as follows:

"7.12 Very High Cost Cases

A CDS Supplier which has conduct of a case that is a very high cost case shall notify the Commission in writing as soon as is practicable.

A very high cost case is a case with regard to which: if the case proceeds to trial, that trial would be likely to last for 41 days or longer.

~~(a) — If the case proceeds to trial, that trial would be likely to last for 25 days or longer; or~~

~~(b) — The defence costs with regard to any one defendant (or group of defendants represented by the same firm of solicitors) are likely to amount to~~

~~£150,000 or greater (such sum to include the solicitor's fees and disbursements, advocate's fees and VAT).~~

Any question as to whether a case fulfils the criterion above shall be referred to and decided by us.

Once a case has been committed, transferred or sent to the Crown Court for trial you shall consider whether the case satisfies or may satisfy the definition of a very high cost case. If it does or if you are in any doubt, you shall refer it to us within 7 days of committal, transfer or sending or any later date on which the criteria for a very high cost case are satisfied for the first time. A note should be available on file to confirm that you have complied with this Rule. Failure to do so will be treated as a breach of contract."

Amend heading for section 8 and insert explanatory paragraph.

"8 Scope of Duty Solicitor Service and Service Obligations – Except for CDS Direct Pilot Cases

Please see Section 9 in this Part for details of the CDS Direct Pilot and CDS Direct Pilot Cases. CDS Direct Pilot Cases are excluded from the scope of this Section (and we will make no payment to you in respect of any of them)."

Amend paragraphs 8.2.6 to 8.2.11 as follows

"6. Subject to paragraph 8.2.8 and paragraph 8.2.6(a) below, the following services shall be provided once a case has been accepted:

- (a) except in the case of Former CDS Direct Pilot Cases where a CDS Direct Pilot Telephone Adviser has been involved, initial advice by a Duty Solicitor personally by speaking ~~directly~~ to the client either on the telephone or, if unless the Solicitor is at or adjacent to the Police Station and can immediately advise the Client, in person. Where, or the police refuse to permit the suspect to speak to the Duty Solicitor on the telephone, the solicitor in which case he or she may attend the Police Station. If the Client is incapable by reason of drunkenness or violent behaviour of speaking to the Solicitor, initial advice may be postponed. Other circumstances in which initial advice may be postponed include sleep periods or where an interpreter is required. The Duty Solicitor shall make arrangements to provide initial advice as soon as the Client is capable of speaking to him or her. In Former CDS Direct Pilot Cases, nothing in this paragraph shall prevent an Accredited Representative, rather than a Solicitor, from having responsibility for the first contact with a Client after a CDS Direct Pilot Telephone Adviser has had involvement with that Client;
- (b) attendance at the Police Station to provide advice and to attend all police interviews with the Client during the Duty Period where the

Client has been arrested in connection with an ~~arrestable~~ offence under section 24 of the Police and Criminal Evidence Act 1984;

- (c) attendance at any identification parade, group or video identification or confrontation;
 - (d) attendance at the Police Station where the Client complains of serious maltreatment by the police;
 - (e) ~~attendance at the Police Station where the Client is a youth or person at risk;~~
 - (f) ~~the provision of advice where a Client is to be charged with an arrestable offence on the implications of the caution which will be given when the Client is charged. Consideration must also be given as to whether attendance should take place at that time bearing in mind whether it is possible to give confidential telephone advice and the possible consequences of not making a statement when being charged;~~
 - (g)(f) representation in connection with an application for a warrant of further detention under Part A, paragraph 2.2.1(d) of this Specification;
 - (h)(g) if a police interview and any identification parade, group or video identification or confrontation is postponed to a time when the Duty Solicitor is no longer on duty or, if on Panel, where it is no longer convenient to act as Duty Solicitor, he or she must make arrangements to ensure that the Client continues to receive advice either by a Duty Solicitor or Own Solicitor. The Duty Solicitor may continue to act on an Own Solicitor basis.
7. Except in Former CDS Direct Pilot Cases where a CDS Direct Pilot Telephone Adviser has been involved, the Duty Solicitor shall give initial advice. On giving initial advice under 8.2.6 (a) above, or on you receiving a referral of a CDS Direct Pilot Case from the Call Centre Service instructing you to provide Police Station Attendance, the Duty Solicitor shall exercise his or her discretion whether it is in the interests of the Client for him or her or, if appropriate, an Accredited Representative to attend the Police Station. Attendance is mandatory under paragraphs 8.2.6(b) to (d) and (f) above, unless exceptional circumstances exist (see paragraph 8.2.8 below). In assessing whether attendance is necessary the Duty Solicitor shall consider whether advice can be given over the telephone with sufficient confidentiality and if he or she can communicate effectively with the Client by this means.
8. If exceptional circumstances exist which justify non-attendance at the Police Station, the Duty Solicitor shall record his or her decision not to attend, including details of the exceptional circumstances and the reasons for the decision on the case file. Exceptional circumstances could arise if a Client expressly instructs the Duty Solicitor not to attend. Exceptional

circumstances are less likely to arise in the case of paragraphs 8.2.6(d) ~~and (e)~~.

9. If the Client is a Services Person at a services establishment or elsewhere assisting with an investigation by the Services Police and suspected of offences contrary to the Services Discipline Acts where:
 - (a) the investigation involves any offences which cannot be dealt with summarily; or
 - (b) the offence appears to the interviewing Services Police to be serious, the Duty Solicitor shall attend personally upon the Client where he or she considers that such attendance is necessary for the protection of the Client's interests.
10. If the Client is a Services Person requiring representation within England and Wales at a custody hearing before a judicial officer under the Armed Forces Discipline Act 2000, the Duty Solicitor shall attend personally upon the Client to provide Advice and Assistance (including Advocacy Assistance).
11. The services described in paragraph 8.2.6 above shall be provided as follows:
 - (a) initial advice under paragraph 8.2.6(a) above shall be provided by a Duty Solicitor where the case has been referred by the Call Centre Service or accepted as a Duty Solicitor case at the Police Station. For the avoidance of doubt, in Former CDS Direct Pilot Cases where a CDS Direct Pilot Telephone Adviser has been involved, nothing in this paragraph shall prevent an Accredited Representative, rather than a Solicitor, from undertaking the first contact with a Client;
 - (b) the services referred to at paragraphs 8.2.6(b) to ~~(e)~~ above shall be provided by a Duty Solicitor or, where appropriate, by an Accredited Representative;
 - (c) the services referred to at paragraphs 8.2.6~~(e)~~ to ~~(g)~~, 8.2.9 and 8.2.10 above may only be provided by a Duty Solicitor or an Accredited Representative who is a Solicitor where the case has been referred by the Call Centre Service or accepted as a Duty Solicitor case at the Services establishment.

If services are provided under (b) or (c) above by an Accredited Representative or Solicitor who is not an employee of the firm, the travel time claimed shall not exceed 45 minutes each way. Where this rule is applied the fares and/or mileage claimed should not exceed that which would have been paid had the journey lasted less than 45 minutes."

Amend paragraph 8.2.14 as follows:

- “14. You shall only attend the Police Station when the Sufficient Benefit Test set out in Part B, Rule 2.5 is satisfied. The circumstances when this test will be satisfied include:
- (a) to provide advice prior to and during interview
 - (b) to advise at an identification procedure (including a video identification procedure when the Client is not present);
 - ~~(c) — when appropriate, to advise a Client who is a youth or person at risk;~~
 - ~~(d)~~(c) when appropriate, to advise on the implications of the caution when the Client is charged with an ~~arrestable~~ offence;
 - ~~(e)~~(d) to advise when the advice may materially affect the outcome of the investigation and goes significantly beyond initial advice;
 - ~~(f)~~(e) to advise a Client who complains of serious maltreatment by the police.”

Amend paragraph 8.2.16 as follows:

- “16. Any attendance must be for the purposes of providing legal advice that could not be given over the telephone to the Client. You may not claim for an attendance when the advice could have been provided reasonably by way of telephone advice. If we consider that the advice could have been provided reasonably over the telephone, we may disallow the costs of any attendance at the Police Station, however, we will take into account any evidence on file that attendance was considered necessary at the time the decision to attend was made. The file must show that attendance was expected to materially progress the case beyond initial advice. If you were already at the same Police Station, we may cap your Claim to no more than the value of the Police Station Telephone Advice fixed fee if we consider that advice could have been provided reasonably over the telephone. This paragraph shall not apply to any attendance which is undertaken by way of referral from the Call Centre Service on a CDS Direct Pilot Case.”

Amend paragraph 8.2.19 as follows:

- “19. An attendance at the Police Station for an ineffective bail to return may be disallowed if ~~telephone~~ checks were not made prior to the attendance to establish whether it would be effective.”

Insert new paragraph as follows after Part B 8.3.2(h):

“(i) Advice and Assistance and , where appropriate, Advocacy Assistance to an individual apply to vary bail conditions imposed by police under Section 47 (1E) of the Police and Criminal Evidence Act 1984, as amended by the Criminal Justice Act 2003.”

Amend paragraph 8.3.6:

“6. A court Duty Solicitor shall remain at the court until it ~~has become~~ is clear to him or her ~~after consulting the clerk of the court where practicable~~ that Advice and Assistance or Advocacy Assistance is not likely to be required by any defendant. Where it is not clear whether such help is needed, he or she shall consult the clerk of the court or other suitable person.”

Amend paragraph 8.5.2:

“2. If a Client wishes another Solicitor to act, the Duty Solicitor shall not act unless the named Solicitor is not available and the Client asks the Duty Solicitor to act on that occasion only. ~~If a Representation Order has been granted to a Client of another CDS Supplier, a court Duty Solicitor shall not act for that Client, unless instructed to act as agent for that CDS Supplier. If the court session takes place on a non-business day and the court Duty Solicitor is unable to ascertain whether a Representation Order has been granted or is unable to contact the CDS Supplier assigned under an Order, then the court Duty Solicitor may act on that occasion only provided that the Client agrees and the court Duty Solicitor takes all reasonable steps to notify the assigned CDS Supplier. A court Duty Solicitor shall not act for a Client who has his Own Solicitor unless the court session takes place on a non-business day and the court is unable to secure the Own Solicitor’s attendance (or is unable to determine whether the Client has his Own Solicitor). If the court Duty Solicitor represents a Client in these circumstances he shall take all reasonable steps to notify the client’s Own Solicitor as soon as possible after the hearing. The court Duty Solicitor may also act (unless prevented by local rules) as agent for the client’s Own Solicitor, but this shall not be claimed as Duty Solicitor work.~~”

Add a new section 9 as follows:

“9 The CDS Direct Pilot

Explanation of CDS Direct Pilot

1. Under the CDS Direct Pilot some Police Station Telephone Advice for Clients at the Police Station will be provided centrally rather than by the Duty Solicitor.

2. CDS Direct Pilot Telephone Advisers will provide Police Station Telephone Advice to the conclusion of the case in respect of all Police Station Telephone Advice only cases (as set out in Part B, paragraphs 8.2.17(a) to (d)) unless one of the exceptions set out in paragraphs 8.2.18(a) to (e) applies or there are other reasons identified by the CDS Direct Pilot Telephone Adviser which mean that telephone advice or attendance by a Duty Solicitor is necessary.
3. In addition, in Specified Regional CDS Direct Pilot Schemes, CDS Direct Pilot Telephone Advisers will provide telephone advice for all non indictable only offences up to the time when a Duty Solicitor is required to attend the Police Station. A Duty Solicitor may be asked to provide Police Station Telephone Advice in these Schemes instead of CDS Direct, even though the offence is non indictable only, if there are special reasons why the case should be handled by a Duty Solicitor rather than a CDS Direct Pilot Telephone Adviser (such as the CDS Direct Pilot Telephone Adviser having a conflict of interest) (a “Special Request”).
4. Where a Former CDS Direct Pilot Case is referred to a Duty Solicitor for Police Station Attendance, you may claim one Fixed Acceptance Fee. The Fixed Acceptance Fee is paid in respect of any and all telephone calls you may undertake on the Former CDS Direct Pilot Case in the Investigations Class, and is payable irrespective of the number or nature of calls made. The Fixed Acceptance Fee is claimable even if you do not make any telephone calls.
5. You must not claim (and we will not pay) for any Police Station Telephone Advice to clients in the Investigations Class in respect of cases where CDS Direct has given telephone advice. This does not preclude claiming the Fixed Acceptance Fee referred to above.
6. As soon as CDS Direct refer a case to a Duty Solicitor to attend at the Police Station, the case ceases to be a CDS Direct Pilot Case and the normal service requirements in Sub Section 8.2 apply, with the exception of the obligation to provide initial telephone advice under paragraph 8.2.6 (a).
7. Where a Duty Solicitor is asked to attend on a case which has been handled by CDS Direct, the Duty Solicitor may ask an Accredited Representative to conduct the first attendance.

General Provisions and Definitions

8. The “CDS Direct Pilot” will end on four weeks’ written notice by us.
9. The “CDS Direct Pilot” is the pilot in which the Call Centre Service refers certain requests for Police Station Advice and Assistance (“CDS Direct Pilot Cases”) to a CDS Direct Pilot Telephone Adviser (instead of to the Duty Solicitor).

10. During the CDS Direct Pilot:

- (a) all CDS Direct Pilot Cases are excluded from the scope and service obligations of Part B Section 8; and
- (b) you are not entitled to (and must not claim) any payment for any work in the Investigations Class of Work in respect of CDS Direct Pilot Cases; and
- (c) in respect of cases excluded from the definition of CDS Direct Pilot Cases under paragraph 11(b)(iii) below you are not entitled to (and must not claim) any payment for any telephone calls in the Investigations Class of Work. This does not preclude you claiming a Fixed Acceptance Fee if entitled to do so under (d) below.
- (d) If a Former CDS Direct Pilot Case is referred to a Duty Solicitor for Police Station Attendance, you are entitled to claim one Fixed Acceptance Fee for that Case. The Fixed Acceptance Fee is paid in respect of any and all telephone calls you may undertake on the Former CDS Direct Pilot Case in the Investigations Class, and is payable irrespective of the number or nature of calls made. The Fixed Acceptance Fee is payable even if you do not make any telephone calls. If, after a Former CDS Direct Pilot Case is referred to you for Police Station Attendance, you are notified that attendance is not necessary (for example, because an interview has been cancelled) you are still entitled to claim the Fixed Acceptance Fee. The level of the Fixed Acceptance Fee is set out in Part E of this Specification.

11. “CDS Direct Pilot Cases” are:

- (a) all requests for Police Station Advice and Assistance by a Duty Solicitor within the scope of Part B, paragraphs 8.2.17(a) to (d) of the Specification (i.e. Police Station Telephone Advice only cases) except where the request is a Special Request or relates to an indictable only offence; and
- (b) in the Specified Regional CDS Direct Pilot Schemes only, all requests for Police Station Advice and Assistance by a Duty Solicitor except where:
 - (i) the request is made in relation to an indictable only offence; or
 - (ii) at the time the request is made, a time has been arranged for the Client to be interviewed by the Police; or
 - (iii) telephone advice has been given by a CDS Direct Pilot Telephone Adviser in response to a request and the point has been reached at which a Duty Solicitor is now required to attend; or
 - (iv) the request is a Special Request.

12. “Fixed Acceptance Fee” is the fee which Duty Solicitors are entitled to claim under Paragraph 10 (d) above.
13. “Former CDS Direct Pilot Case(s)” are cases which have been CDS Direct Pilot Cases but which no longer meet the definition of a CDS Direct Pilot Case.
14. The “Specified Regional CDS Direct Pilot Schemes” are such local Duty Solicitor Schemes that we notify to you in writing. As at the start of the CDS Direct Pilot, these are:
 - Bootle & Crosby
 - Knowsley
 - Liverpool
 - Southport
 - St Helens
 - Wirral
 - Boston
 - Spalding
15. “Special Request” is a request identified to you as such by the Call Centre Service. For example (without limitation) Special Requests may include requests where the Call Centre Service considers that, because of a conflict of interest or other good reason, the request should be handled by the Duty Solicitor (instead of by a CDS Direct Pilot Telephone Adviser) or considers that Advocacy Assistance is required, or considers that one of the criteria in Part B, paragraph 8.2.18 (i.e. exceptions to Police Station Telephone Advice only cases) applies.
16. “CDS Direct Pilot Telephone Adviser” means a person approved by us to be employed or engaged specifically to provide telephone advice for the purposes of the CDS Direct Pilot, the minimum qualification for whom shall be the Law Society’s Police Station Qualification.”

Appendix 4: Contract Specification Part C Contract Work – Reporting Assessment and Payment of Claims

Amend table at Part C 1.18.2 as follows:

Section A Disbursements which may be incurred	Section B Disbursements which may not be incurred
Birth and other certificates	Clients’ travelling and accommodation expenses
Counsel’s fees	Court fees unless for a search/ photocopies
Enquiry agents and <u>foreign language</u> interpreters’ fees	<u>Sign language interpreters’ fees (except where it would be unreasonable to expect the supplier to make the adjustment under the Disability Discrimination Act 1995)</u>
Experts’ fees including for medical reports	
Fees recoverable on oaths	
Newspaper advertisements	
Photographers’ accounts	

Add new paragraph after Part C 1.18.11 as follows:

“12. The responsibility for providing and paying for sign language interpreters will normally fall on the supplier in accordance with the Disability Discrimination Act 1995, in which case the fees are considered an administrative overhead and may not be claimed from us. In exceptional cases where the supplier considers it would not be reasonable to make the adjustment, the fees may be claimed from us. Not to incur the disbursement may inhibit the client's ability to receive assistance. In those exceptional circumstances we consider the expenses to be unusual in their nature and you may therefore apply to the Regional Director for prior authority before the expenditure is incurred. We may refer any such application received to the CDS Policy Team for consideration.”

Appendix 5: Contract Specification Part E Remuneration under the General Criminal Contract

2. Work undertaken in the Criminal Investigations Class

Amend paragraph 2.2 as follows:

“2.2 Police Station Advice and Assistance

	National	London
Availability during Duty Period	4.20 (to a max of 100.80)	4.25 to a max of 102.00)
Police Station Advice and Assistance other than by telephone		
- Duty Solicitor (unsocial hours)	69.05	69.05
- Duty Solicitor (other hours)	52.00	56.20
- Own Solicitor	52.00	56.20
- Duty Solicitor – serious offences (unsocial hours)	80.00	80.00
- Duty Solicitor – serious offences (other hours)	60.00	65.00
Travelling and waiting		
- Duty Solicitor (unsocial hours)	69.05	69.05
- Duty Solicitor (other hours)	52.00	56.20
- Own Solicitor	28.80	28.80
Police Station Telephone Advice fixed fee (including all telephone calls whether “routine” or “advice”, <u>(except CDS Direct Pilot Cases for which no such fee may be claimed)</u>).	30.25 per Claim	31.45 per Claim
<u>Fixed Acceptance Fee (former CDS Direct Pilot Cases referred to a Duty Solicitor for Police Station Attendance only)</u>	<u>8.00 per Case</u>	<u>8.00 per Case</u>

The provisions set out below apply to all Criminal Investigations that commence after 00.01 on 1 February 2004 (except that the reference to CDS Direct Pilot Cases applies from 00.01 31 October 2005):

1. Except in the case of CDS Direct Pilot Cases (in respect of which no Police Station Telephone Advice fixed fee is claimable by you) One Police Station Telephone Advice fixed fee may be claimed by you per investigation provided that you undertake at least one telephone call during the investigation. An “investigation” is defined as all the work undertaken for one Client in respect of an arrest or arrests made at the same time. No further fixed fee may be claimed by you if any further arrest of the same Client takes place any time at a Police Station or other place of detention whilst the investigation continues.”

Amend paragraph 2.2.11:

“11. Duty Solicitor serious offence rates may be claimed for Police Station Attendances provided that:

- (a) the attendance is to advise a client under arrest for one or more of the following serious offences, either as a principal or as a secondary party, or who has been arrested on a warrant for failing to answer bail or an extradition warrant in respect of a case in which he or she is accused of such an offence:
 - (i) Treason (common law);
 - (ii) Murder (common law);
 - (iii) Manslaughter (Homicide Act 1957 and common law);
 - (iv) Causing death by dangerous driving (~~Section 1~~ Section 10 Road Traffic Act 1988);
 - (v) Rape (Section 1 Sexual Offences Act 2003);
 - (vi) Assault by penetration (Section 2 Sexual Offences Act 2003);
 - (vii) Rape of a child under 13 (Section 5 Sexual Offences Act 2003);
 - (viii) Assault of a child under 13 by penetration (Section 6 Sexual Offences Act);
 - (ix) Robbery (Section 8 Theft Act 1968);
 - (x) Assault with intent to rob (common law);
 - (xi) Arson (Sections 1(1), 1(2) or 1(3) Criminal Damage Act 1971);
 - (xii) Perverting the course of public justice (common law);
 - (xiii) Conspiracy to defraud (common law);
 - (xiv) Kidnapping (common law);
 - (xv) Wounding or grievous bodily harm (Sections 18 and 20 Offences against the Person Act 1861);
 - (xvi) Conspiracy to commit any of the above offences (Section 1 Criminal Law Act 1977);
 - (xvii) Soliciting or inciting to commit any of the above offences (common law);
 - (xviii) Attempting to commit any of the above offences (Sections 1 or 1A Criminal Attempts Act 1981);
 - (xix) Any offence if the client is accused of possessing a firearm, shotgun or imitation firearm;
 - (xx) Any offence if the client is detained under section 41 of the Terrorism Act 2000.
- (b) ~~The Matter has been referred to the firm by the Duty Solicitor Call Centre or the Duty Solicitor Call Centre has been notified if the case is accepted whilst the solicitor is already at the Police Station. Duty Solicitor rates would normally be payable.~~

- (c) The attendance is personally undertaken by a Duty Solicitor employed by the firm accepting the case, or by a Duty Solicitor who is a partner in the firm accepting the case~~call from the Duty Solicitor Call Centre.~~”

Insert new paragraphs 2.2.15 to 18 as follows:

“How to identify Duty Solicitor work

15. Duty Solicitor work attracts higher rates than Own Solicitor work, and entails different service obligations (for instance, it may not be undertaken by a Probationary Representative). If work is deemed to be Duty Solicitor work, then Duty Solicitor rates apply and you must comply with the relevant service obligations.
16. Work is always deemed to be Duty Solicitor work if both (a) and (b) below apply:
- (a) The case is accepted from the Call Centre Service or accepted at the Police Station as a Duty Solicitor case and notified to the Call Centre; and
- (b) The work takes place before the end of the Duty Period (for rota cases) or is initial advice (for Panel and Back-up cases).
17. You may deem work to be Duty Solicitor work if either (a) or (b) below applies:
- (a) The work takes place during a Duty Period (however the case was accepted); or
- (b) (i) The case is accepted from the Call Centre Service or accepted at the Police Station as Duty Solicitor and notified to the Call Centre Service; and
- (ii) The work is undertaken during the initial continuous period of custody.
18. All other attendances shall be treated as Own Solicitor.

Examples of the split between Duty and Own Solicitor work:

- (a) Duty Solicitor is on rota from 6 pm to 6 am: A case is accepted from the Call Centre Service at 4 am and continues after the end of the rota period at 6 am If the CDS Supplier continues to meet the requirements of the Duty Solicitor Arrangements and other contractual requirements for Duty Solicitor work, then Duty Solicitor rates can be claimed until the end of the Client’s initial period of detention. Alternatively, once the Duty Period ends at 6 am and initial advice has been provided by the Duty Solicitor (or Accredited Representative if CDS Direct Pilot has been involved), the CDS Supplier may convert to an Own Client basis, send a Probationary Representative if the Matter is non indictable only and claim Own Client rates from that point.
- (b) For Panel and Back-up calls, once initial advice has been provided by the Duty Solicitor, the CDS Supplier may continue to meet the requirements for Duty Solicitor work and claim Duty Solicitor rates or may convert to an Own Client basis and claim Own Client rates.”

Amend Part E 3.3 as follows:

“3.3 Advocacy Assistance in a magistrates’ court (other than by a court Duty Solicitor acting as such) or Crown Court (and Crown Court Representation where an order is granted by the Commission)

	National	London
Preparation	49.70	52.55
Advocacy	62.35	62.35
Travelling and waiting	26.30	26.30
Routine letters received and telephone calls	3.90 per item	4.05 per item

Note:

No claim may be made for accompanying Counsel at a hearing (see Part B, Rule 4.8). These rates apply where the Commission exceptionally grants Representation for Crown Court cases, for instance in appeals against anti-social behaviour orders. (Advocacy Assistance is also available for these cases).”

Appendix 6: Contract Specification Part G Guidance on Contract Sanctions

Contract Specification Part G – Guidance on Contract Sanctions

Add the following paragraph at the end of this section as follows:

“Guidance on Disclosure of Information

34. For the avoidance of doubt, if we obtain any information that we consider may indicate that there is or has been professional misconduct, we are likely to decide that it will be in the public interest to disclose it to the Law Society (Clause 13, Standard Terms).”

Appendix 7: Amendments to Criminal Bills Assessment Manual

The following amendments are made to the Criminal Bills Assessment Manual with effect from 31 October 2005.

3.1	This section has been revised to reflect the current position of the Effective Trial Management Programme
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2.5 Effective Trial Management Issues

- The primary aim of the Effective Trial Management Programme (ETMP) is to reduce the number of ineffective trials by improving case preparation and progression from point of charge through to trial or earlier conclusion. Each local criminal justice area is being asked to consider the guidance in the Criminal Case Management Framework and, in light of existing practice, to make what further changes consistent with the parameters set by the Criminal Procedure Rules, the Consolidated Criminal Practice Direction and the Framework are required to local case management. The Effective Trial Management Programme (ETMP) is a programme that is seeking to reduce the number of ineffective court hearings by 27% by April 2006. In order to do this it has introduced the Criminal Case Management Framework. The Programme is being piloted in a number of court centres nationally.
- The Criminal Case Management Framework introduces the role ~~of~~ of the Case Progression Officer at the court and within the CPS. These officers are there to liaise directly with a nominated contact from the defence firm. The Commission will pay for work undertaken in connection with the case progression officer where such work is done (a) with an intention of progressing the matter, regardless of whether it did in fact progress, or (b) as a direct consequence of a court order. The Framework also suggests a similar role for the defence. The Criminal Procedure Rules (Rule 3.4(1)) clearly state that 'at the beginning of the case each party must, unless the court otherwise directs – (a) nominate an individual responsible for progressing that case'.
- Consequently, certain aspects of case management shall now constitute claimable work where undertaken (a) with an intention of progressing the matter, regardless of whether it did in fact progress, or (b) as a direct consequence of a court order even if such work might hitherto have been considered administrative.
- An example of such qualifying work would be the completion and submission to the court of a Pre-Plea and Case Management Hearing pre-hearing readiness form, that was introduced by the Lord Chief Justice's Practice Direction on 22 March 2005 (amendment no. 11 to the Consolidated Criminal Practice Direction (Case Management)).
- An example of work that cannot be claimed and that is still treated as an overhead is time spent speaking to the court usher, where such attendance is notional and nominal in terms of times or costs, for example, asking when the case will be called or seeking to have the case moved to the head of the list. Claims of one unit or more, for such specific attendances, will need to be supported by clear evidence on the files as to why so long was taken.

3.2 The following new section replaces sections 3.10 to 3.13 of the Manual, and covers proceedings after the conclusion of a case (other than breach proceedings, which are dealt with in section 3.8). The intention is to bring some consistency and certainty to these types of proceedings, which have been increasing in number. The guidance is particularly relevant to review hearings under the Criminal Justice Act 2003.

The current sections 3.10 to 3.13 should be deleted and sections 3.14 and 3.15 should be renumbered accordingly as sections 3.11 and 3.12.

3.10 Proceedings after the conclusion of a case (other than breach proceedings)

How are such proceedings covered?

1. If a defendant pleads guilty or is found guilty, the case normally concludes when the court sentences him or her. Some work after that, including letters explaining the outcome of the case and giving advice on appeal, is remunerated under the Representation Order. The file can then be closed and the case billed.
2. There may, however, be further proceedings relating to the case after this point. These may be in respect of breach, revocation or variation of community orders, breach of licence, or review hearings for Drug Treatment and Testing Orders (DTTOs) or under the Criminal Justice Act 2003.
3. For guidance on breach proceedings, see section 3.8 above. The following guidance applies to other proceedings after the conclusion of the case.
4. Where such proceedings take place, we consider that the original Representation Order for the substantive case should in principle be used to cover them. A supplemental bill should be submitted when it appears that there is no more work to be done.
5. Where the original case was at the Crown Court, the question of whether the new proceedings will be covered by the original Representation Order will be decided by the court or the National Taxing Team who would assess the bill. If it is not so covered then the proceedings may be treated as a new case.
6. The fact that a court issues a new Representation Order for proceedings does not automatically mean they may be treated as a new case. But if they are treated as a new case, there must be a new Representation Order for the work to be remunerated.
7. If the proceedings are treated as a new case, they must be billed separately from the original proceedings. However, they should be grouped together with other simultaneous proceedings as a 'series of offences' for standard fee purposes. For instance, if a defendant is charged with a fresh offence of burglary and also accused of breaching a community order for a previous theft, the burglary and the breach may be treated as a 'series of offences' although billed separately from the original theft case.

Is the work justified as reasonable?

8. Neither attendance at such hearings nor work in relation to them is necessarily justified as reasonable. The reasonableness of each attendance and each item of work must be considered separately, taking into account the issues involved and the likely consequences for the defendant. Auditors shall not apply hindsight when assessing the reasonableness of the work. In assessing reasonableness the following principles should be applied:
- Work and attendances in relation to proceedings for an alleged breach of a community order will be justified if there is a realistic prospect of the defendant being re-sentenced to a custodial term.
 - Work and attendances in relation to proceedings to revoke, vary or breach a community order may be justified depending on the circumstances of the case and the requirements of the order at issue. It is unlikely that an attendance will be reasonable, for example, if the issue is a technical variation of the requirements or the level of fine to be imposed. It may be reasonable if there were a realistic prospect of the defendant being made subject to new and onerous requirements, such as a curfew.
 - Work and attendances in relation to review hearings for DTTOs or under the Criminal Justice Act 2003 will rarely, if ever, be justified. Although courts can vary the terms of an order at such hearings, it is expected that they will adjourn the case for the defendant to secure representation if it is in the interests of justice for them to do so.

3.3 This section has been amended to clarify the guidance with regard to the circumstances and manner of making applications for defendant expenses.
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4.6 Defendant Expenses

1. A defendant's expenses for travelling to see a solicitor and travelling to court are not generally payable out of the fund. The GCC defines a disbursement as "*travelling and witness expenses and other out of pocket expenses incurred [by a fee-earner] (and which, apart from this contract, would be properly chargeable to a client) in performing contract work*". The travelling and other expenses of the defendant are personal expenditure which is not incurred by a fee-earner (*R -v- Arney* - The Taxing Compendium - Appendix 7). This case determined that the travelling expenses of the defendant are not incurred for the purpose of giving legal aid as the defendant travels to court for the purpose of standing trial.
2. However, following the case of *R -v- Legal Aid Board ex parte Eccleston [1998] Divisional Court, 3 April (unreported)* regional offices may exceptionally receive applications for prior authority under the former Regulation 54(1)(e) of the General Regulations which is now reproduced at Part B, Rule 5.2(e) GCC to fund the client's travel and other expenses to attend court, legal advisers or experts. The Eccleston case concerned an application for prior authority under a civil certificate and the court held that the client's travel expenses could amount to a proper solicitor's disbursement for which prior authority could be granted if the relevant step was essential

for the proper conduct of the proceedings and the client was “impecunious” and could not otherwise afford the expense involved.

Where an application for such funding is made it should be submitted to the CDS Policy Team. The application should be comprehensive and should include as a minimum the following information and documents:

- A fully completed CDS 4 (application for prior authority). This should clearly detail why authority for expenditure is sought from the Commission.
 - Full details of the defendant’s income and outgoings to demonstrate impecuniosity.
 - Written evidence confirming that funds are not available from any other source, e.g. Department of Work and Pensions.
 - Confirmation that full enquiries or applications have been made to ascertain the availability of alternative funding but that it is not available and cite why. Where other agencies are involved with the defendant and as a result owe a duty of care to that person, written confirmation should be sought as to why they cannot assist with funding travel. Finally, the application should set out, in the context of the Eccleston judgement and where relevant should plead in aid articles from the European Convention and the Human Rights Act 1998, arguments in support of their application given the circumstances of the case or the defendant.
3. If a defendant is acquitted, he or she may be granted a defendant’s costs order to recover expenses incurred in the proceedings. This may include travel expenses. If the Commission grants prior authority to cover such expenses then any expenses covered by the prior authority shall not be recoverable from central funds. All other reasonable expenses may be recoverable under a defendant’s costs order (see section 10.6).
4. ~~These type of applications should be referred to the Policy and Legal Department for further advice but br~~ Broadly the same principles will apply in determining any application for prior authority as set out in the civil guidance (see Note for additional Guidance 11-09 to 11-11 Legal Aid Handbook 1998/99).

3.4 This section has been amended to clarify guidance on the payment of witness expenses.

4.7 Witness Expenses

1. Payment to a witness attending to give evidence is made from central funds, i.e. the Lord Chancellor. This is because witnesses are seen as assisting the court. For professional witnesses, i.e. witnesses who attend to give factual evidence e.g. of the fact that the defendant attended the witness for treatment for a broken arm, the allowances are fixed by the Department for Constitutional Affairs. For expert witnesses, a reasonable amount will be allowed having regard to the nature and difficulty of the case, the work necessarily involved and such factors as whether there is a reasonable

choice of experts available. There are no prescribed scales of allowance for expert witnesses, but guideline bands for expert witnesses and interpreters can be found in the “Guide to Allowances” (Appendix 5).

Part C, Rule 1.19 GCC provides:

“Payment to a witness attending court to give evidence in criminal proceedings shall not be claimed under this Contract, unless there is a direction from the court that the witness expenses may not be claimed from central funds and they are not recoverable from any other source. If the court does so direct, you must still satisfy us that the expense was reasonably incurred.”

2. Professional witnesses’ (like other factual witnesses’) allowances are intended simply to compensate for expenses/losses incurred in attending court to give evidence. Expert witnesses’ payments are intended to reflect the fact that they are attending court in their line of business. They are not, therefore, simply compensation payments.
3. There is no limit on the kind of expenses, which may be claimed by ordinary witnesses of fact, but there is a limitation on the total allowable.
4. Witnesses at court in criminal cases are paid for attending not by the solicitor who instructed them but from central funds. Witnesses should be advised to In many cases they can receive payment by attending-attend at the court’s at the court cash office when they have finished giving their evidence in order to apply for their expenses on the appropriate form. Where a firm fails to advise such a witness appropriately and pays the witness expenses themselves the Commission shall not reimburse the firm for the expenditure and it will be for them to seek to recoup the funds from the court. Payment, in such circumstances is not always guaranteed and will be a matter for each court concerned. If an expert witness’s hourly rate is in the region of the rates usually charged by similar experts and is deemed reasonable, there should be no delay in payment. The amount allowed will generally include a notional hour’s preparation for the hearing.

3.5 This section has been added to clarify the limits of public funding in the provision of legal services.

4.20 Non-legal support services for defendants

1. The Criminal Defence Service exists to secure legal services for individuals involved in criminal investigations and criminal proceedings. As well as the services themselves it funds expenses that are incidental or conducive to those services, such as travel costs for solicitors and experts (and, in exceptional cases, defendants).
2. There is, however, a wide range of services that are available to a defendant that do not fall within the above category.
3. It is important to recognise that the existence of a service, the fact that it may help to secure benefits or rights for the defendant, and the fact that other agencies may be unable or unwilling to provide it, does not imply that the

Criminal Defence Service is an appropriate agency to provide that service. Disbursements relating to such services will be disallowed, and prior authority applications relating to them will be refused.

4. An example of the services that will not be funded is 'support services' for defendants or defence witnesses with learning disabilities. These services support and prepare the individuals for their appearance at court, and assess them for the equivalent of the 'special measures' provided for victims and witnesses. The Criminal Defence Service has funded such services in the past, but regards this as an error. No such services will be funded in future.

3.6	This section has been amended to reflect the changes made to the General Criminal Contract in May 2004.
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5. Relationship Between Advice and Assistance, Advocacy Assistance and Representation

5.1 Changes to the Scope of the Criminal Proceedings Class

1. Amendments have been made to the General Criminal Contract to amend the scope of the Criminal Proceedings Class. The amendments are effective from 17 May 2004.

The consequences of the amendments are as follows:

- Advice and Assistance in the Criminal Proceedings Class is abolished: This includes the provision of any advice and assistance to a witness who may be or has been called to testify in a case and where such testimony could result in their self incrimination and possible charge with a criminal offence. If one or more individuals have been charged with an offence then this restriction will apply to any witness who needs advice in connection with the matter which has resulted in a criminal charge.
 - Reinstatement of backdating provisions similar to the former Regulation 44(7) of the Legal Aid in Criminal and Care Proceedings (General) Regulations 1989;
 - Abolition of Advocacy Assistance for early hearings;
 - Work undertaken by a court duty solicitor, when acting as such, may not be claimed under a representation order.
 - Allowance of up to an hour's post charge advice when an application for a representation order is refused.
2. Such work is claimed in different ways according to whether it was undertaken before or after the date of the relevant amendment to the Contract, i.e. 17 May 2004, and guidance is provided for both situations with additional guidance on transitional arrangements.

3.7 This section is included so as to bring the guidance fully into line with the contract which currently differs from the guidance as a result of a typographical error – see paragraph 2

11. The Appeals Procedure

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

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

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

11.1 Introduction

1. The jurisdiction of the Costs Committee is defined in the Legal Services Commission Review Panel Arrangements 2000:

“Costs Committee means a Committee appointed under these arrangements to deal with applications for appeal or review against the assessment of costs (or the refusal of a request for a prior authority to incur costs) by the Commission as provided for by regulations or contract and to exercise any jurisdiction in relation to costs exercisable by Area Committees under regulations made under the Legal Aid Act 1988”.

2. If a solicitor disagrees with an assessment undertaken by an regional office, then he or she may apply to the Costs Committee to review the determination (Part C, Rule 1.11 GCC). The time limit for doing so is ~~21 days~~ 28 days from the date of receipt of the notice of assessment. There is no further appeal against the Costs Committee’s decision unless the Costs Committee certifies that the appeal gives rise to a point of principle of general importance. Where the Costs Committee so certifies the solicitor may appeal in writing within 21 days to the Costs Appeals Committee (Part C, Rule 1.12 GCC). Assigned counsel has a separate right of appeal to the Costs Committee when his or her fees have been reduced on assessment (Part C, Rule 1.14 GCC).

Appendix 8: Summary of Amendments to Manuals

Summary of Changes to the Duty Solicitor Manual – Effective 31 October 2005

This is a summary of the main changes only. A revision marked version of the manual will shortly be placed on the Commission's website.

- Amendments as a result of the implementation of the CDS Direct Pilot
Paragraphs 1.1, 9.2.1, 9.4.1 and 9.6.1
- Changes to the scope of the court duty solicitor scheme
Paragraphs 2.5.2, and 2.13.1
- Delete item from list to be discussed during police station monitoring visits
Paragraph 2.22.2 (j)
- Amendments to reflect the change in scope of the Contract to remove services cases where there is an attendance outside of England and Wales
Paragraph 3.1 (c)
- Amendments to implement restrictions on undertaking police station attendances and police station telephone advice
Paragraphs 3.20.3 (b), 4.1.1, 9.4.2, 9.5.2 and 9.6.1
- Amendments to add waiver to Duty Solicitor Arrangements 4.19 for individuals with higher rights of audience.
Paragraph 4.16
- Clarification added on when police station duty solicitor cases can be converted to own solicitor
Paragraph 9.7.1

Summary of Changes to the Police Station and Court Duty Solicitor Cost Assessment Manual – Effective 31 October 2005

This is a summary of the main changes only. A revision marked version of the manual will shortly be placed on the Commission's website.

- Amendments as a result of the implementation of the CDS Direct Pilot
Paragraphs 1.2.1(c), 2.2.2(b), 4.4.1, 4.14.1, 4.15.1, 4.15.2(e), new section 4.17, 7.6.3 and new appendix 12.
- Amendments resulting from the introduction of duty solicitor serious offence rates
Paragraphs 2.3.3, new section 4.16
- Amendments to clarify when duty solicitor rates apply
Paragraph 4.7, 4.13.1 and 4.13.2
- Amendments to implement restrictions on undertaking police station attendances and police station telephone advice
Paragraphs 4.8, 4.11.1(a), 4.15.1 and 9.5.2(b)
- References to arrestable offences removed
Paragraphs 4.14.1, 7.7.3, 7.8.1 and appendix 11
- Amendments to reflect the change in scope of the Contract to remove services cases where there is an attendance outside of England and Wales
Paragraphs 6.2.1 and 6.5.1
- Amendment to clarify that e-mail communications between the police and practitioners can be treated as a single telephone call
Paragraph 7.6.1
- Amendments to when the sufficient benefit test is satisfied
Paragraph 7.7.3
- Amendments to clarify the means by which practitioners can check whether a bail to return will be effective
Paragraph 7.7.6
- Amendments to reflect the fact that sign language interpreters must now be paid by the supplier under the terms of the Disability Discrimination Act 1995, except where such expenses would not be a reasonable adjustment under the Act.
Paragraphs 7.11.2 and 7.11.3
- Changes to the scope and service obligations of the court duty solicitor scheme
Paragraphs 10.3.1, 10.5.3 and 10.5.4