

Part B

Arrangements & Directions

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Criminal Defence Service Duty Solicitor Arrangements 2001

Criminal Defence Service Duty Solicitor Arrangements 2001

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4B-001

Criminal Defence Service Duty Solicitor Arrangements 2001¹

NOTES

¹ Paragraph 8.1 (formerly 8.4) amended by the Commission with effect from 24 April 2001 and paragraphs 2.1 (amendments to definition of “Commission”, “Police Station Register”, “Salaried Defender Service” and “Services Police”), 4.7, 4.10(b)(ii) and 4.23 5.1(c), 5.4(g), (h) and (j), 5.6, 6.10, deletion of former paragraph 6.11, 7.24(a)(iii), deletion of former paragraphs 8.1–8.3 and 8.4 amended with effect from 19 August 2002. Paragraph 7.13 amended by the Legal Services Commission with effect from 30 April 2005 and further amended with effect from 2 October 2006.

1. Purpose

1. The Legal Services Commission shall operate two Duty Solicitor schemes as part of the Criminal Defence Service. These are:
 - (a) the Police Station Duty Solicitor scheme;
 - (b) the Magistrates’ Court Duty Solicitor scheme.
2. The primary objective of these schemes is to ensure that individuals requiring Advice and Assistance (including Advocacy Assistance) at a Police Station or a magistrates’ court, and who choose not, or are not able, to obtain such help from an Own Solicitor, may have access to the services of a Duty Solicitor.
3. These Arrangements are made by the Commission under section 3(4) of the Access to Justice Act 1999.

4B-002

2. Definitions

1. The following terms are defined as follows:
 - “*Accreditation*” means accreditation under Parts One and Two of Stage One of the Law Society’s Criminal Litigation Accreditation Scheme.
 - “*Accredited Representative*” means an individual (including a solicitor or a barrister) whose name is included on the Police Station Register and who is accredited by a body recognised by us as competent to do so.
 - “*Act*” means the Access to Justice Act 1999. “*Advice and Assistance*” means advice and assistance within the meaning of section 13 of the Act.
 - “*Advocacy Assistance*” means Advice and Assistance by way of advocacy within the meaning of section 13 of the Act.
 - “*Back-up*” means a system by which the Call Centre Service (when a Duty Solicitor on a Rota is unable to accept a request for Police Station Advice and Assistance) seeks to contact another Duty Solicitor.
 - “*Busy Scheme*” means a Local Scheme serving a magistrates’ court dealing with 1,250 or more defendants per annum prosecuted for non-motoring offences.
 - “*Call Centre Service*” means the telephone service established by the Commission to receive initial requests for Advice and Assistance from individuals at Police Stations.
 - “*Call In*” is a scheme in which the court Duty Solicitor is required to attend at the magistrates’ court’s request. This may operate as a Rota or a list.

“CDS” means the Criminal Defence Service established by the Commission under section 12 of the Act.

“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 Public Defender Service.

“Commission” means the Legal Services Commission established under section 1 of the Act and includes its Regional CDS Managers.

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“CPD” means continuing professional development as defined in the Law Society Training Regulations 1990. “Duty Solicitor” means a solicitor, or employed barrister, who is admitted to a Local Scheme under these Arrangements.

“Designated Fee Earner” is defined in Part D of the General Criminal Contract Specification.

“Less Busy Scheme” means a Local Scheme serving a magistrates’ court dealing with less than 1,250 defendants per annum prosecuted for non-motoring offences.

“Local Committee” means a Committee established by the Commission under these Arrangements for consultation about a Local Scheme.

“Local Scheme” and “Scheme” means a scheme covering one or more magistrates’ courts or one or more Police Stations within a geographical area defined by us, which is usually a petty sessions area.

“Own Solicitor” means a solicitor who provides Advice and Assistance to a client other than as a Duty Solicitor.

“Panel” and “Panel Case” means an arrangement by which the Call Centre Service telephones Duty Solicitors in sequence to identify a Duty Solicitor available to provide Advice and Assistance at a Police Station.

“Police Station” means a police station or any other place where a constable is present and, except where expressly excluded by the General Criminal Contract or these Arrangements, any place where a Services Person is assisting with an investigation by Services Police.

“Police Station Register” is the list of Accredited and Probationary Representatives maintained by the Commission or the Law Society.

“Public Defender Service” means the service provided by employed lawyers, funded directly by the Commission as part of the CDS, to provide Advice and Assistance and Representation to individuals.

“Regional CDS Manager” means an employee of the Commission with responsibility for the management of the Local Schemes within the geographic area covered by a Regional Office.

“Region” has the meaning given in Schedule 1 to these Arrangements.

“Regional Director” and “Regional Office” have the meanings given in the Legal Services Commission Regional Arrangements 2000. “Regional Committee” means the Committee appointed by the Commission for each Region for the purpose of determining appeals under these Arrangements and facilitating consultation.

“Rota” means a rota of Duty Solicitors to provide Advice and Assistance or Advocacy Assistance at magistrates’ courts and Advice and Assistance at Police Stations.

“Services Person” means a person assisting with an investigation by the Services Police.

“*Services Police*” means members of the Royal Navy Regulating Branch, members of the Royal Military Police, Royal Air Force Provost Officers or members of the Royal Air Force Police.

4B-003

3. **Regions and Local Schemes**

1. For the purposes of these Arrangements, England and Wales shall be divided into the Regions which are set out in Schedule 1.
2. The Commission shall establish Local Schemes within each Region and shall identify which magistrates’ courts and Police Stations will be covered by a particular scheme.
3. The Commission may change the magistrates’ courts and Police Stations covered by a Local Scheme if it considers it appropriate to do so.

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4. **Membership of Local Schemes**

1. The Commission shall determine, in accordance with these Arrangements, the membership of each Local Scheme.

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Applications

2. Applications for Local Scheme membership shall be made to the appropriate Regional Office of the Commission, on a form approved by the Commission, and will be judged on the criteria set out in these Arrangements.

Competence

3. The Commission is responsible for ensuring that all members of Local Schemes are competent to undertake Duty Solicitor work.
4. An applicant for membership of a Local Scheme must provide the Commission with evidence of his or her competence to undertake Duty Solicitor work in accordance with paragraph 4.6 of these Arrangements.
5. An applicant shall have comprehensive experience of criminal defence work, including the provision of advice in the Police Station and advocacy in the Crown Court or magistrates’ courts throughout the 12 months prior to the application for membership of the Local Scheme. However:
 - (a) if an applicant has been in full time employment as a prosecuting solicitor, justices’ clerk or in another similar position for a period of 18 months, he or she must have had

comprehensive experience of criminal defence work throughout the six months immediately prior to the application;

- (b) any interval of up to 12 months, during or at the end of the periods of experience required by this paragraph, when the applicant was absent from work due to sickness, injury, pregnancy, maternity leave or for other good reason may be disregarded.
6. An applicant shall provide evidence of competence to the Commission in one of the following ways:

For membership of a Magistrates' Court Local Scheme

- (a) Previous selection by a local duty solicitor committee as a court Duty Solicitor (in accordance with the Legal Aid Board Duty Solicitor Arrangements 2000 or a former version of those Arrangements), provided that the applicant was a court Duty Solicitor for all or part of the period from 1 January to 1 April 2001 or selected under paragraph 8.1; or
- (b) Accreditation as defined in these Arrangements and satisfaction of the criteria in paragraph 4.7.

For membership of a Police Station Local Scheme

- (c) Previous selection by a local duty solicitor committee as a Police Station Duty Solicitor (in accordance with the Legal Aid Board Duty Solicitor Arrangements 2000 or a former version of those Arrangements), provided that the applicant was a Police Station Duty Solicitor for all or part of the period from 1 January to 1 April 2001 or selected under paragraph 8.1; or
 - (d) Accreditation as defined in these Arrangements and satisfaction of the criteria in paragraph 4.7.
7. Where accredited status was achieved more than 12 months before the date of application to the Local Scheme, the applicant shall demonstrate the regular satisfactory performance of Police Station and magistrates' court work since that time.

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Location – General Rules¹

Membership of a first Scheme

- 8. An applicant shall notify the Commission of the location of the CDS Supplier's office at which he or she is normally in attendance, i.e. at which he or she is normally based for the majority of the working week. An applicant may only notify one such office.
- 9. Subject to meeting the other membership criteria, an applicant is entitled to join the Police Station and magistrates' court Local Schemes covering the area in which his or her office notified in accordance with paragraph 4.8 is located. Alternatively an applicant may apply to join a Police Station Scheme and a magistrates' court Scheme other than the ones covering

the area in which his or her office is located, if the Police Stations and courts covered by the alternative Schemes are more readily accessible to the applicant's office.

NOTES

¹ Office location in relation to the magistrates' courts and Police Stations covered by a Local Scheme is important because of the need to ensure that:

- (a) Duty Solicitors can attend the Police Stations or magistrates' courts on the Local Scheme promptly;
- (b) the majority of clients seen at a Police Station or a magistrates' court by a Duty Solicitor can easily attend that solicitor's office where any further work is necessary.

Membership of additional Schemes

- 10. The Commission may, subject to paragraph 4.19, permit an applicant to join more than one Police Station Local Scheme and more than one magistrates' court Local Scheme provided that:
 - (a) in the case of a Police Station Local Scheme, the applicant can demonstrate that he or she is able to attend the Police Station within 45 minutes of receiving a call – whether in or out of normal office hours;
 - (b) for Police Station and magistrates' court Local Schemes, the applicant is located at an office of a CDS Supplier for whom he or she undertakes criminal work and that office:
 - (i) for a Busy Scheme, is the office identified under paragraph 4.8 and that office is readily accessible to the court covered by the Local Scheme which the applicant wishes to join; or
 - (ii) for a Less Busy Scheme, is the office identified under paragraph 4.8 or another office of the same CDS Supplier which is accessible to the court covered by the Local Scheme which the applicant wishes to join and arrangements will be made to see clients at that office.¹
- 11. Where a strict application of the criteria set out in paragraphs 4.10(a) and (b) would prevent individuals wishing to receive Duty Solicitor services from doing so by restricting the membership of a particular Local Scheme to an unacceptably low level, the Commission may relax the requirements of those paragraphs in respect of applications to join a Scheme.¹

NOTES

¹ The circumstances in which paragraph 4.11 might apply are, for example:

- (a) where the geographical catchment areas of Police Station or a magistrates' court may be large and where there may be relatively low numbers of solicitors; or
- (b) where the Police Stations at which individuals are held are at some distance from where they were arrested and from the magistrates' court at which any hearing may take place.

Special rules

12. The Commission may introduce special rules for a particular Local Scheme or Schemes which differ from the general rule where the particular local conditions of the Scheme mean that an alternative approach would be more appropriate.¹
13. Where the Commission plans to introduce special rules for a Local Scheme or Schemes it shall consult the relevant Regional Committee and Local Committee or Local Committees. Details of any rules introduced will be published and made available to all affected CDS Suppliers within the area covered by the Local Scheme or Schemes. The Commission shall provide six weeks notice of the introduction of any such special rules.

NOTES

¹ The circumstances in which paragraph 4.12 might apply are, for example, where there may be a large number of different Schemes in relatively close proximity to each other and a large number of CDS Suppliers with offices reasonably accessible to the Police Station and courts within all, or a number of, those Schemes.

CDS Supplier

14. An applicant shall be a full or part time Designated Fee Earner employed by, or a partner in, a CDS Supplier and shall notify the appropriate Regional Office of the CDS Supplier for which he or she will undertake Duty Solicitor work, i.e. which will submit claims to the Commission for the work and which will be contractually responsible for the performance of the applicant's Duty Solicitor work.

Status

15. An applicant shall hold a current practising certificate which may (in the discretion of the Commission) be conditional.
16. An applicant shall not be a special constable.
17. An applicant may not apply for Local Scheme membership during any period of suspension or exclusion from membership imposed under paragraphs 5.2 or 5.4 of these Arrangements.
18. Where:
 - (a) an applicant is under investigation, faces an outstanding criminal charge or has been convicted of a criminal offence which is not treated as spent under the Rehabilitation of Offenders Act 1974; or
 - (b) an applicant has been the subject of any adverse findings by the Adjudication Committee of the Office for the Supervision of Solicitors or by the Solicitors' Disciplinary Tribunal, or where any complaint or application to either body has not been determined; or
 - (c) some other good reason arises which makes an applicant's scheme membership incompatible with the standards expected of a Duty Solicitor,the Commission may refuse the application, provided that it gives the applicant written reasons for its decision.

General requirement

19. The Commission shall normally require Duty Solicitors to serve on both the Local Police Station and Local magistrates' court Schemes.

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Approval of applications

20. Where an application for Local Scheme membership is approved by the Commission, it shall notify the applicant within 30 days of the date of receipt of the application.

Refusal of applications

21. If the Commission refuses the application it shall notify the applicant and provide a statement of reasons for the decision within 30 days of receipt of the application.
22. Any applicant whose application is refused under paragraph 4.21 may appeal to the Regional Committee in accordance with Section 7 of these Arrangements.
23. There is no right of appeal to the Commission against a refusal, revocation or suspension of Accreditation by the Law Society. Such appeals should be directed to the relevant Accreditation assessment organisation or to the Law Society.

4B-005

5. Continued Membership of Local Schemes

1. Continued membership of a Local Scheme is dependent on a Duty Solicitor:
 - (a) undertaking at least two hours CPD annually on issues relevant to the law, practice and procedure in the Police Station or magistrates' courts;
 - (b) undertaking personally a number equivalent to the majority of:
 - (i) Court Duty Solicitor Rota turns allocated to that solicitor; and
 - (ii) Police Station Duty Solicitor Rota slots allocated to that solicitor; and
 - (c) continuing to undertake criminal defence work generally and Duty Solicitor work in particular as evidenced by accepting at least 12 Police Station Duty Solicitor or Own Solicitor cases annually involving attendance at the Police Station or, where fewer than this number of cases are offered, all cases so offered (or a number equivalent to those offered).
2. The Commission shall have power to suspend for a period of up to 12 months or remove a Duty Solicitor from the Local Scheme or Schemes of which he or she is a member if he or she fails to meet any of the criteria in paragraph 5.1 in relation to a Scheme. On suspension, the Commission may impose conditions which must be met before the Duty Solicitor resumes his or her membership of the relevant Scheme or Schemes.
3. The Commission shall not suspend or remove a Duty Solicitor from membership of a Local Scheme or Schemes where any of the criteria in paragraph 5.1 are not met because of an absence from work of up to 12 months due to sickness, injury, pregnancy, maternity leave or for other good reason.

4. The Commission may also suspend or remove a Duty Solicitor from a Local Scheme or Schemes where in relation to a Scheme he or she:
 - (a) unreasonably failed to attend a Police Station where he or she should have done so;
 - (b) sent a representative to the Police Station when he or she should have attended personally;
 - (c) failed to accept a reasonable number of Panel calls;
 - (d) failed to accept Rota cases;
 - (e) unreasonably failed to carry out a duty or duties or failed to comply with the requirements set out in these Arrangements including local instructions drawn up under paragraphs 6.12 to 6.14 or any contract between the Commission and the CDS Supplier;
 - (f) is under investigation, faces an outstanding criminal charge or has been convicted of a criminal offence or is the subject of an investigation by the Office for the Supervision of Solicitors;

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- (g) does not demonstrate the level of competence required for Accreditation or Accreditation has been suspended or revoked;
 - (h) no longer complies with the “location” rules set out in paragraphs 4.8 to 4.13;
 - (i) is no longer a Designated Fee Earner with a CDS Supplier;
 - (j) does not comply with, and the Commission has not waived, the requirement in paragraph 4.19; or
 - (k) some other good reason arises which makes his or her continuing scheme membership incompatible with the standards expected of a Duty Solicitor.
5. Where a Duty Solicitor is suspended from membership of a Local Scheme under paragraphs 5.2 or 5.4 and is unable to fulfil any conditions imposed under paragraph 5.2, he or she may apply to the Commission in writing for restoration to the Scheme or Schemes concerned once the suspension period has expired.
6. Where a Duty Solicitor is removed from a Scheme under paragraph 5.4, a fresh application for Scheme membership will be considered against all of the criteria in Section 4 of these Arrangements. The reasons for the applicant’s removal may be a factor considered by the Commission under paragraph 4.18 (c) of these Arrangements.
7. A Duty Solicitor who has been suspended or removed under this Section may appeal to the Regional Committee in accordance with the provisions of Section 7 of these Arrangements.
8. The Commission shall postpone a suspension or removal until any appeal is heard unless it considers that there is good reason for suspending or removing the Duty Solicitor prior to the appeal hearing which shall be notified to the appellant.
9. Where the Commission is considering suspension or removal it must notify the Duty Solicitor of its reasons in writing and must offer him or her the opportunity to make written representations which must be submitted within 14 days of the date of notification. Where the Commission is considering suspension or removal under paragraphs 5.4 (e), (f), (g), (i), (j) or (k) it may suspend or remove immediately if it considers it necessary to do so.

Changes in circumstances

10. It is the responsibility of a Duty Solicitor, and the CDS Supplier for which he or she acts as a Duty Solicitor, to notify the Commission immediately in any of the following circumstances:
 - (a) if the Duty Solicitor leaves the CDS Supplier in which he or she is employed as a Duty Solicitor;
 - (b) if the Duty Solicitor's practising address changes;
 - (c) if the Duty Solicitor is no longer able to comply with any of the qualifying or continuing membership criteria (set out in Sections 4 and 5 of these Arrangements);
 - (d) if the Duty Solicitor wishes voluntarily to withdraw from a Scheme or Schemes in accordance with paragraph 6.10 of these Arrangements;
 - (e) on resignation from a Local Scheme, giving at least one month's notice;
 - (f) if he or she is under investigation for or is charged with a criminal offence;
 - (g) if any proceedings have been instituted before the Adjudication Committee of the Office for the Supervision of Solicitors or by the Solicitors' Disciplinary Tribunal; or
 - (h) if the Adjudication Committee of the Office for the Supervision of Solicitors or the Solicitors' Disciplinary Tribunal has made an adverse finding.

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4B-006

6. Management of Local Schemes

1. The Commission shall manage each Local Scheme. Generally, responsibility for management will lie with the Regional CDS Manager in the Commission's Regional Office which covers the area in which the Local Scheme operates.

Rotas, Panels and Call Ins

2. The Commission shall decide:
 - (a) in consultation with the appropriate magistrates' courts, whether there should be attendance or Call In (whether by Rota or list) cover, or a combination of both, for each magistrates' court Local Scheme;
 - (b) whether there should be Rota or Panel cover, or a combination of both, for each Police Station Local Scheme,and the times during which such arrangements shall be in operation. In both instances the Commission shall also consult with the relevant Regional Committees and with CDS Suppliers through any local consultation mechanism established under paragraph 7.23 of these Arrangements.

Scheme Lists

For each Local Scheme the Commission shall maintain a list of slots. CDS Suppliers will be allocated one slot on the Local Scheme list for every Duty Solicitor employed by that CDS Supplier who is a member of that Scheme.

4. Rota, Panel and Call In Schemes will be based on the Local Scheme lists. Rota slots will be allocated to CDS Suppliers in accordance with the slots on the Local Scheme list.

Rotas

5. The Commission shall determine the number of Duty Solicitors to deploy at any one time in consultation with the relevant magistrates' courts, Police Stations, relevant Regional Committees and with Scheme members through any local consultation mechanism established under paragraph 7.24 of these Arrangements, and may determine that Duty Solicitors should be available or extra Duty Solicitors made available to respond to unusual demands.
6. The Commission shall normally produce Rotas covering a minimum period of three months, and a maximum of six months, and shall normally issue such Rotas one month before the start date.
7. Duty Solicitors who are new to a particular Scheme will be added to the Local Scheme list as soon as possible.
8. Copies of any Rota (or list for a Call In Scheme) will be sent, as appropriate, to the court, the Call Centre Service and each CDS Supplier with a Duty Solicitor on the Rota.

Voluntary or permanent withdrawal from Schemes

9. It is the responsibility of both the Duty Solicitor and the CDS Supplier for which he or she undertakes Duty Solicitor work to ensure that the Commission is notified that a Duty Solicitor wishes to leave a Local Scheme.
10. A Duty Solicitor may notify the Commission that he or she wishes to withdraw voluntarily from a Local Scheme for a period of up to three months but may only do so once within a period of 12 months. Where this is the case the Duty Solicitor will be restored to the Scheme automatically at the end of the withdrawal period. The ...

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three month withdrawal period may be extended provided that the Duty Solicitor still complies with the Accreditation and other membership requirements.

Client awareness

11. The Commission shall take steps to ensure that potential clients are made aware of the availability of the Duty Solicitor at Police Stations and magistrates' courts.

Local Instructions

12. The Commission may draw up local instructions which set out how the Duty Solicitor service is to be provided at particular Police Stations or magistrates' courts.
13. Local instructions may also set out arrangements agreed with other criminal justice agencies to improve the overall effectiveness of the criminal justice system locally. CDS Suppliers with Duty Solicitors on the Local Scheme will be consulted using the arrangements in

paragraph 7.24 before such instructions are introduced or amended. The Regional Committee may also be consulted.

14. Where local instructions are drawn up, Duty Solicitors on the relevant Scheme or Schemes shall comply with them.

Duty Solicitor Service

15. If it is not possible for any Duty Solicitor to provide service on a Local Scheme the Commission may make alternative arrangements for such service to be provided.

Services cases

16. The Commission may introduce a special Panel for cases where Services personnel require Advice and Assistance and Advocacy Assistance.

4B-007

7. Committees, Appeals and Consultation

Regional Committees

1. The Commission shall establish one or more Regional Committees for each of the Regions set out in Schedule 1. The area covered by a Regional Committee may be amended by the Commission in consultation with the relevant Regional Committee. The role of a Regional Committee is to:
 - (a) consider appeals in accordance with these Arrangements; and
 - (b) facilitate consultation and communication between the members of Local Schemes, the Commission and other criminal justice agencies affected by the operation of Duty Solicitor services.
2. The members of each Regional Committee shall be such as the Regional Committee shall from time to time appoint and will normally be the following:
 - (a) at least one Duty Solicitor from each of the Local Schemes falling within the Region covered by the Regional Committee who shall normally be a member of any Local Committee in the Region or other local liaison group established by the Commission under paragraph 7.24;
 - (b) one or more Justices of the Peace, nominated by the Magistrates' Association;
 - (c) one or more Justices' Clerks, nominated by the Justices' Clerks' Society;
 - (d) one or more representatives of the police force or forces in the Region, nominated by the chief officer(s) of police;
 - (e) one or more lay members who shall, prior to appointment, be interviewed by the chair or vice chair of the Regional Committee to ascertain the applicant's...

...

understanding of the role and suitability for membership (members of court staff are ineligible for appointment under this sub-paragraph);

- (f) one or more representatives of the probation service or services in the Region, nominated by that service or those services;
 - (g) one or more representatives of the Crown Prosecution Service in the Region, nominated by that service;
 - (h) a district judge (magistrates' court); and
 - (i) such other members as the Committee decides to appoint.
3. The members of a Regional Committee shall not be fewer than 10 nor more than 35. The majority of members shall be solicitors appointed under paragraph 7.2 (a) above.
 4. Each member shall be appointed for a term of up to three years and may be appointed for successive periods not exceeding three years, provided that the total period of service shall not exceed ten years, until he or she attains the age of 70. A member shall be reappointed only if he or she has attended at least half of all the meetings which were held during his or her membership unless there are special circumstances to permit reappointment despite a lower level of attendance.
 5. A member of a Regional Committee may resign by giving notice in writing to the appropriate Regional Office. Any vacancy on a Regional Committee so arising shall be filled in accordance with the provisions in this Section.
 6. A member of the Regional Committee shall be disqualified from membership if:
 - (a) a receiving order in bankruptcy is made against him or her;
 - (b) he or she becomes a patient within the meaning of the Mental Health Act 1983;
 - (c) he or she fails to attend meetings without leave of the Committee for six months;
 - (d) he or she ceases to be a nominee of any body or organisation he or she was nominated to represent; or
 - (e) there is some other good reason to disqualify him or her.
 7. The Committee shall at the first meeting after its appointment and then annually elect a member to act as chair of the Committee and another to act as vice chair. A chair or vice chair shall be eligible for reappointment at the expiration of such period provided that no chair or vice chair shall hold office for more than three years.
 8. A Regional Committee may appoint a sub-committee of at least three members to whom it may delegate all decisions excluding appeals, provided that the full Regional Committee shall meet at least twice a year. A sub-committee shall consist of at least one Duty Solicitor and one lay member.
 9. A Regional Committee or its chair may appoint a sub-committee of at least three members appointed under 7.2 (a) or (e) (provided that there are at least two members appointed under 7.2 (a)) to whom it may delegate the determination of appeals.
 10. A quorum shall consist of not less than one third of the members of the committee or sub-committee and in any event shall consist of a minimum of two members.
 11. A Regional Committee or a sub-committee shall keep minutes of its proceedings and such minutes shall be signed by the Chair.
 12. The ruling of the chair of a Regional Committee or a sub-committee shall be final on any matter of procedure arising at a meeting.

Appeals

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 from a Local Scheme under paragraphs 5.2 or 5.4;

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- (c) a decision to refuse to register a police station representative under paragraph 2.2 or 2.9 of the Police Station Register Arrangements 2001;
 - (d) a decision to suspend or remove a police station representative under paragraph 6.4 of the Police Station Register Arrangements 2001;
 - (e) 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.
14. All appeals shall be made in writing within 30 days of receipt of the decision against which the appeal is to be made, subject to the Regional Committee having discretion to accept an appeal outside that period for good reason. The appellant shall submit written representations when giving notice of appeal. The Commission's staff may obtain and provide information relating to the appeal provided that the appellant receives a copy.
15. On receipt of an appeal under paragraph 7.13 the Commission may reconsider its decision, but if it decides not to do so it shall refer the matter to the Regional Committee or to another Regional Committee if no suitable members of the Regional Committee are available to consider the appeal.
16. The Regional Committee will normally consider appeals at the latest within three months of the date on which the appeal was received. The appellant shall have the right to make oral representations and the Committee may, in any event, require personal appearance. The Commission may also be represented at the appeal.
17. If oral representations or written representations subsequently submitted include matters not mentioned in the written representations referred to in paragraph 7.14 above, the Regional Committee has a discretion not to consider such additional matters unless the appellant has given 14 days notice to the Commission's staff and the Regional Committee.
18. The Regional Committee shall consider the application afresh in accordance with the relevant criteria in these Arrangements using the most current guidance available and the decision of the Regional Committee will replace the decision of the Commission.
19. A Duty Solicitor member of the Regional Committee who is a member of the Local Scheme to which the appeal relates shall not participate in the hearing and determination of such appeal.
20. The Regional Committee may exclude the appellant from any other Scheme or Schemes on the basis of its appeal findings and shall provide reasons for doing so.
21. The Regional Committee may allow an appeal subject to such conditions as it considers appropriate.

22. Appellants will be notified of the decision of the Regional Committee in writing. The Regional Committee shall provide reasons for its decision.

Local Committees

23. The Commission will use its best endeavours to establish arrangements for consulting and discussing the operation of a Local Scheme with representatives of that Scheme.
24. This may be achieved through the establishment of:
- (a) a Local Committee, membership of which shall be open to:
 - (i) one representative from each CDS Supplier with a member on the Local Scheme;
 - (ii) a representative of the Justices' Clerk of each magistrates' court covered by the Scheme;
 - (iii) a Justice of the Peace;
 - (iv) a representative of the police force covering the area concerned;
 - (v) a nominee of the Local Law Society;
 - (vi) one or more lay members; and
 - (vii) such other members as the Local Committee decides to appoint; or

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- (b) liaison arrangements with the criminal law sub-committee, or equivalent, of the Local Law Society; or
 - (c) such other local arrangements as appear effective to the Commission.
25. Where the Commission considers that a Local Committee established under paragraph 24(a) above would be too large to facilitate effective consultation and liaison and having consulted all CDS Suppliers with a Duty Solicitor on the Local Scheme as to whether they all wish to be represented it may restrict the number of representatives under paragraph 7.24 (a)(i) to a maximum of 10 in which case those appointments shall be made by the Commission after inviting nominations from all firms.

Committee Fees

26. There shall be paid to any Regional Committee members attending meetings under these Arrangements such fees and such travelling and other proper expenses and subsistence allowances as the Lord Chancellor may from time to time authorise.

4B-008

8. Transitional Arrangements

1. Applications by solicitors wishing to become Duty Solicitors made before 1 February 2001 shall be determined under the provisions of the Duty Solicitor Arrangements 2000 (as amended) by 31 May 2001. Any application not determined by a local committee by 1 April 2001 shall be referred to the relevant regional committee. From 2 April 2001 any reference to a Regional Committee shall be to a Regional Committee established under paragraph 7.2. Any appeal or review by the Duty Solicitor Committee shall, after 2 April 2001, be undertaken by a committee drawn from members of Regional Committees appointed under

paragraph 7.2. No appeal or review may be considered under the Duty Solicitor Arrangements 2000 (as amended) after 30 September 2002.

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Schedule 1

Criminal Defence Service Duty Solicitor Arrangements 2001

4B-009

Duty Solicitor regions defined by Counties, unitary authorities and Metropolitan Borough Councils.

London South

Bexley	Lewisham
Bromley	Merton
Croydon	Richmond upon Thames
Greenwich	Southwark
Hounslow	Sutton
Kingston upon Thames	Wandsworth
Lambeth	

London East

Barking & Dagenham	London City
Camden	Newham
Hackney	Redbridge
Havering	Tower Hamlets
Islington	Waltham Forest

London West

Barnet	Haringey
Brent	Harrow
Ealing	Hillingdon
Enfield	Kensington & Chelsea
Hammersmith & Fulham	Westminster

South Eastern

Brighton
East Sussex
Kent

Medway Towns
Surrey
West Sussex

Southern A

Bracknell Forest
Buckinghamshire
Milton Keynes
Newbury
Oxfordshire

Reading
Slough
Windsor & Maidenhead
Wokingham

Southern B

Hampshire
Isle of Wight

Portsmouth
Southampton

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South Western A

Cornwall
Devon
Plymouth

Somerset
Torbay

South Western B

Bath & N. E. Somerset
Bournemouth
Bristol
Dorset
Gloucestershire
North Somerset

Poole
Somerset
South Gloucestershire
Swindon
Wiltshire

South Wales

Blaenau Gwent

Neath Port Talbot

Bridgend
Caerphilly
Cardiff
Carmarthenshire
Ceredigion
Merthyr Tydfil
Monmouthshire

Newport
Pembrokeshire
Powys
Rhondda Cynon Taff
Swansea City
Torfaen
Vale of Glamorgan

North Wales

Conwy
Denbighshire
Flintshire
Gwynedd

Isle of Anglesey
Powys
Wrexham

West Midlands A

Herefordshire
Shropshire
Telford & Wrekin

Warwickshire
Worcestershire

West Midlands B

Birmingham
Coventry
Dudley
Sandwell

Solihull
Walsall
Wolverhampton

West Midlands C

Staffordshire
Stoke-On-Trent

--- Looseleaf Page Break (20) ---

East Midlands A

Derby
Derbyshire

Nottingham
Nottinghamshire

Lincolnshire

East Midlands B

Leicester

Leicestershire

Northamptonshire

Rutland

Eastern A

Bedfordshire

Cambridgeshire

Luton

Norfolk

Peterborough

Suffolk

Eastern B

Essex

Hertfordshire

Southend

Thurrock

North Western A

Bolton

Bury

Cheshire

Halton

Manchester

Oldham

Rochdale

Salford

Stockport

Tameside

Trafford

Warrington

Wigan

North Western B

Blackburn with Darwen

Blackpool

Cumbria

Lancashire

North Eastern A

Gateshead

Newcastle-upon-Tyne

North Tyneside

Northumberland

South Tyneside

Sunderland

North Eastern B

Darlington
Durham
Hartlepool

Middlesbrough
Redcar & Cleveland
Stockton on Tees

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Yorkshire & Humberside A

Bradford
Calderdale
Kirklees
Leeds

North Yorkshire
Wakefield
York

Yorkshire & Humberside B

Barnsley
Doncaster
East Riding of Yorkshire
Kingston upon Hull

North East Lincolnshire
North Lincolnshire
Rotherham
Sheffield

Merseyside

Knowsley
Liverpool
Sefton

St. Helens
Wirral

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Manual Break
4B-010

Police Station Register Arrangements 2001¹

NOTE

¹ The following Arrangements were approved by the Legal Services Commission and came into effect on 2 April 2001 and paragraphs 1 (definition for “CPD” added and amendments to definition of “relevant tests”, “supervising solicitor”), 2.2, new 2.3, 2.7 and 2.8 added, 4.(i), (ii) and new (vii), 5.1 (i), 6.4(ii), (iv) and new (v) amended by the Legal Services Commission with effect from 30 April 2005. Paragraph 2.7 was amended and paragraph 2.9 added by the Legal Services Commission with effect from 2 October 2006.

1. Interpretation

1. In these Arrangements, unless the context otherwise requires:

“*accredited representative*” is a representative the name of whom is included on the police station register who gives legal advice at police stations having passed the relevant tests;

“*application form*” is the current form for applying for inclusion on the police station register issued by the Commission to the assessment organisation to be given to and completed by the applicant;

“*assessment organisation*” is an organisation approved by the Law Society to apply the relevant tests;

“*certificate of fitness*” is a certificate given by the supervising solicitor that the representative is of suitable character to provide legal advice at police stations and that the applicant should be so regarded by the police in accordance with paragraph 6.13 of the Code of Practice for the Detention, Treatment and Questioning of Persons by Police Officers;

“*Commission*” means the Legal Services Commission at the current address of its Head Office in London;

“*CPD*” means continuing professional development as defined in the Law Society Training Regulations 1990 and at www.cpd.lawsociety.org.uk;

“*legal advice at police stations*” means advice and assistance provided under section 13, Access to Justice Act 1999;

“*police station register*” is a listing of probationary and accredited representatives maintained by the Commission;

“*probationary representative*” is a representative who has not passed the relevant tests and the name of whom is included on the police station register. A probationary representative cannot give advice in connection with indictable only cases;

“*relevant tests*” are the tests undertaken by a probationary representative who must have satisfied an assessment organisation that he/she has passed the portfolio test covering the Part A and B cases, the written test and the critical incidents test the details of which have been prescribed by the relevant assessment organisation. Probationary representatives who have passed the Law Society’s final examination or completed the Legal Practice Course, Fellows and members of the Institute of Legal Executives who have passed the Institute’s Level 4 Professional Higher Diploma in Law (previously known as the Part 2 examinations) which must include the criminal law and criminal litigation papers, solicitors without practising certificates and barristers (who have passed the Bar Vocational Course) are exempt from the written test;

“*representative*” is a probationary or accredited representative included on the police station register who gives legal advice at police stations and who falls within

...

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...

paragraph 2.2. A representative may include a person who is not a solicitor and a solicitor with a practising certificate who is not a duty solicitor;

“*supervising solicitor*” means the solicitor who is currently supervising the representative and who must be a current police station duty solicitor or, failing which, a solicitor who is acceptable to the Commission as meeting the Crime Category Supervisor Standard (including on a temporary basis) but not the Prison Law Supervisor Standard or the Criminal Cases Review Commission Supervisor Standard, and who must have not been suspended from supervising solicitor status under the General Criminal Contract.

4B-011

2. Police Station Register

1. The Commission shall maintain a police station register of probationary and accredited representatives in respect of whom the Commission may pay remuneration to holders of a General Criminal Contract for giving legal advice at police stations.
2. The Commission shall, unless a senior member of staff in the Head Office CDS Policy Team decides there is good reason to refuse, register a representative on the police station register once an assessment organisation has certified that the representative has submitted sufficient details of the Part A portfolio cases to it which have been prescribed by the relevant assessment organisation and has passed or is exempt from the written test, and the representative has applied to the Commission for registration within three months of the certification by the assessment organisation.
3. 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.
4. The Commission shall not include an accredited or probationary representative on the police station register unless an application has been made on a properly completed application form provided by the assessment organisation and completed by the representative. Such representatives will be registered from the date the Commission receives a properly completed application form and the Commission will notify the representative of the date of registration.
5. The Commission shall record the representative as an accredited representative when it has been notified by an assessment organisation that the representative has passed the relevant tests.
6. Representatives are responsible for notifying the Commission of any change of address or other details recorded on the police station register and the Commission shall not be liable for the consequences of suspending a representative from the register where it has not received a certificate of fitness or has not been notified of a change of address.
7. The representative may, where the Commission refuses to register under paragraph 2.2 or 2.9, appeal to a regional committee established under the Commission’s Duty Solicitor Arrangements 2001 or a future version of those Arrangements.
8. An application to appeal under paragraph 2.7 must be made in writing to the Commission and must contain the reasons for the appeal. Any such appeal will be considered as permitted by the Duty Solicitor Arrangements 2001.
9. The Commission shall, unless a senior member of staff in the Head Office CDS Policy Team decides that there is good reason to refuse, register a representative on the police station register as accredited without having to complete any of the relevant tests if the applicant has

previously been a Duty Solicitor and currently holds either CLAS membership or the Police Station Qualification (by passporting or otherwise), provided he or she provides proof of the same together with a signed certificate of fitness from a supervising solicitor.

4B-012

3. Certificate of Fitness

1. The application form must include a certificate of fitness which must be signed by the supervising solicitor.
2. No person applying to be registered on the police station register as a probationary or accredited representative can be so registered without submitting to the Commission a properly completed application form incorporating a certificate of fitness properly completed.

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3. The supervising solicitor must notify the Commission if he or she ceases to supervise the representative or satisfy the definition of supervising solicitor in paragraph 1 of these Arrangements.
4. The representative must notify the Commission if he or she ceases to be supervised by his or her supervising solicitor.

4B-013

4. Suspension from the Police Station Register

1. The Commission shall:
 - (i) subject to any suspension under sub-paragraph (iii), suspend a probationary representative from the police station register where it does not receive notification from an assessment organisation that the representative has passed one of the relevant tests (not including the written test) within six months of the date of registration with the Commission;
 - (ii) unless the representative has previously been suspended under sub-paragraph (i) and subject to any suspension under sub-paragraph (iii), suspend a probationary representative from the police station register where it does not receive notification from an assessment organisation that the representative has passed all the relevant tests (not including the written test) within one year from the date of registration;
 - (iii) suspend a probationary representative from the police station register at the request of the representative for a minimum period of one month where the representative gives prior notice on one occasion only or, where prior notice is not given subject to the reason for suspension being for illness, pregnancy or loss of employment, for a minimum period of one month. Suspension will be for a maximum period of not more than three years from the date of suspension;
 - (iv) suspend a representative from the police station register if a certificate of fitness required under paragraph 6.2 is not received within 14 days;

- (v) suspend a representative from the police station register from the date of an order made by the Solicitors Disciplinary Tribunal under Section 43, Solicitors Act 1974 or a decision to suspend made under paragraph 6.3;
 - (vi) suspend a probationary or accredited representative where the supervising solicitor informs the Commission that he or she is no longer supervising the representative and the representative has not provided a certificate of fitness signed by another solicitor.
 - (vii) if the representative has previously been suspended under sub-paragraph (i) and reinstated under sub-paragraph 5.1 (i), and subject to any suspension under sub-paragraph (iii), suspend a probationary representative from the police station register where it does not receive notification from an assessment organisation that the representative has passed all the relevant tests (not including the written test) within six months of the date of reinstatement.
2. A representative (except for a solicitor with a practising certificate who does not undertake duty solicitor cases) who has been suspended from the register shall not be treated as being registered and may therefore not be remunerated for legal advice at police stations.

4B-014

5. Reinstatement

1. The Commission, having received the relevant notification, shall reinstate a probationary or an accredited representative who has been suspended from the police station register from the date when one of the following events takes place:
- (i) where an assessment organisation informs the Commission that a representative has passed one of the relevant tests (not including the written test) after six months but before one year from the date of registration subject to any period of ...

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...
suspension under paragraph 4.1(iii). Reinstatement shall take effect from the date the Commission is notified by the assessment organisation that the representative has passed one of the relevant tests;
 - (ii) where all the relevant tests (not including the written test) have been passed;
 - (iii) at the end of a period of suspension referred to in 4.1(iii) but only for the balance of the probationary period of one year;
 - (iv) where the representative has not submitted a certificate of fitness under paragraph 6.2 within the relevant period subject to the certificate being received by the Commission;
or
 - (v) where a representative is suspended under paragraph 4.1(v) and permission has been given by the Law Society for the representative to be employed by the employing solicitor or the Commission has consented to a permanently suspended representative being reinstated under paragraph 6.4.

4B-015

6. Fitness to remain on Register

1. A representative must inform his or her supervising solicitor where the representative is under investigation for or has been charged with a criminal offence or is the subject of an investigation by the Office for the Supervision of Solicitors and the supervising solicitor must, in the light of any guidance issued by the Law Society, report the matter to the Commission.
2. Where a question arises as to the suitability of character of the representative to give legal advice at police stations the Commission may request the representative to obtain from the supervising solicitor a certificate of fitness which must be received by the Commission within 14 days of the request being issued.
3. If the Commission is not satisfied that, either before or after a certificate of fitness is received by it, the representative is fit to remain on the police station register the Commission may in respect of one or more of the grounds set out in paragraph 6.4 suspend a representative either for a period of up to 12 months or permanently from the police station register. On suspension the Commission may impose conditions which must be met before the representative is reinstated to the police station register. The Commission shall notify the supervising solicitor of any suspension.
4. A representative may be suspended where:
 - (i) he or she is in breach of a requirement of these Arrangements;
 - (ii) he or she is under investigation, faces an outstanding criminal charge or has been convicted of a criminal offence or is the subject of an investigation by the Law Society;
 - (iii) he or she does not demonstrate the level of competence required by the relevant tests;
 - (iv) he or she has not undertaken at least 25 police station cases annually involving attendance at the police station, unless this is for a good reason;
 - (v) he or she has not undertaken at least six hours CPD annually on issues relevant to criminal law (which may include internal courses); or
 - (vi) some other good reason arises.
5. The representative may, where suspended under paragraphs 6.3 and 6.4, appeal to a regional committee established under the Commission's Duty Solicitor Arrangements 2001 or a future version of those Arrangements.
6. All appeals shall be made in writing within 30 days of receipt of the decision against which the appeal is to be made, subject to the regional committee having discretion to accept an appeal outside that period for good reason. The appellant shall submit written representations when giving notice of appeal. The Commission's staff may obtain and provide information relating to the appeal provided that the appellant receives a copy.

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7. The Commission shall postpone a suspension until any appeal is heard unless it considers that there is good reason for suspending the representative prior to the appeal hearing which shall be notified to the representative.
8. On receipt of an appeal under paragraph 6.5 the Commission may reconsider its decision, but if it decides not to do so it shall refer the matter to the regional committee or to another

regional committee if no suitable members of the regional committee are available to consider the appeal.

9. The regional committee shall normally consider appeals at the latest within three months of the date on which the appeal was received. The appellant shall have the right to make oral representations and the committee may, in any event, require personal appearance. The Commission may also be represented at the appeal.
10. If oral representations or written representations subsequently submitted include matters not mentioned in the written representations referred to in paragraph 6.6 above, the regional committee has a discretion not to consider such additional matters unless the appellant has given 14 days notice to the Commission's staff and the regional committee.
11. The regional committee shall consider the application afresh in accordance with the relevant criteria in these Arrangements and the decision of the regional committee will replace the decision of the Commission.
12. The regional committee may allow an appeal subject to such conditions as it considers appropriate.
13. Appellants will be notified of the decision of the regional committee in writing. The regional committee shall provide reasons for its decision.
14. An application for reinstatement must be made in writing to the Commission. A representative cannot be re-instated to the police station register following permanent suspension without the consent of the Commission. An application for re-instatement against permanent suspension cannot be made for a period of one year from whichever is the later of the date of the decision of the Commission or an appeal decision by the regional committee.

4B-016

7 Miscellaneous

1. The Commission shall approve forms for use in connection with the police station register.

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Specialist Fraud Panel Arrangements 2002

4B-017

Part 1 Preliminary

Introduction

- 1.1 These Arrangements are made by the Legal Services Commission. They set out the arrangements that apply to applications for membership of the Commission's Specialist Fraud Panel. This is a panel of firms with the necessary experience, expertise and capacity to undertake the defence of Very High Cost Fraud Cases under the Legal Services Commission's Very High Cost Criminal Cases Arrangements 2002.

- 1.2 The CHCCU will carry out the functions under these Arrangements, in accordance with any guidance and directions issued by the Commission.
- 1.3 The Specialist Fraud Panel Arrangements do not apply to any VHCC where the date of the Representation Order is on or after the VHCC Panel start date, as under the VHCC Panel Contract VHCC's (fraud and non-fraud) may only be carried out by VHCC Panel Members.
- 1.4 The Specialist Fraud Panel will continue to apply to all VHCCs where the Representation Order was granted before the VHCC Panel start date.
- 1.5 The Legal Services Commission will close the Specialist Fraud Panel to new entrants on 14 January 2008
- 1.6 For the avoidance of doubt, the Specialist Fraud Panel and the VHCC Panel are not the same.
- 1.7 In these Arrangements where we refer to "the Panel" we are referring to the Specialist Fraud Panel.

Interpretation

1.83—In these Arrangements:

"*Applicant*" means a firm applying for membership of the Panel;

"*Arrangements*" means the Legal Services Commission Specialist Fraud Panel Arrangements 2000;

"*Barrister*" or "*Counsel*" includes a solicitor with higher court advocacy rights;

"~~CHCCU~~" "CCU" means the Legal Services Commission's ~~Criminal High Cost Cases~~ Complex Crime Unit;

"*Commission*" means the Legal Service Commission;

"*Committee*" means the committee established in accordance with Annex 2 with the function of determining appeals under these Arrangements;

"*Fraud Case*" means a case in which the offence with which the defendant is charged is primarily, or substantially, founded on allegations of fraud or other serious financial impropriety or involves complex financial transactions or records;

"*High Cost Case*" means a case where: (i) the trial lasted or is likely to last for 25 days or longer; or, (ii) the Total Defence Case Costs in respect of the defendant represented in the case (or group of defendants represented by the same firm of solicitors) amounts to, or is likely to amount to £100,000 or more;

"*High Cost Fraud Case*" means a case that is a Fraud Case and a High Cost Case.

"*Panel*" means the Specialist Fraud Panel;

"*Total Defence Case Costs*" means the total defence case costs comprising solicitors' costs, counsel's fees, experts' fees, disbursements and VAT;

"*Very High Cost Case*" means a case where:

a) the Representation Order is granted on or before 13 January 2008 and

(i) ~~(i)~~ the trial lasted or is likely to last for 25 days or longer; or

(ii) ~~(ii)~~ the Total Defence Case Costs in respect of the defendant represented in the case (or group of defendants represented by the same firm of solicitors) amounts to, or is likely to amount to £150,000 or more; or

b) the Representation Order is granted after 14 January 2008 and which the Commission classifies as a Very High Cost Case on the grounds that:

- (i) if the case were to proceed to trial, the trial would in the opinion of the Commission be likely to last for more than 40 days, unless the Commission considers that there are exceptional circumstances which make it unsuitable to be dealt with under its contractual arrangements for Very High Cost Cases; or
- (ii) if the case were to proceed to trial, the trial would in the opinion of the Commission be likely to last for no fewer than 25 and no more than 40 days, and the Commission considers that there are circumstances which make it suitable to be dealt with under its contractual arrangements for Very High Cost Cases.

“*Very High Cost Fraud Case*” means a case that is a Fraud Case and a Very High Cost Case.

Size of the Panel

- 1.4 The number of firms on the Panel will not be limited.

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4B-018

Part 2 Applying for Panel membership

The Criteria

- 2.1 The criteria for Panel membership are set out in Annex 1a (firm criteria) and Annex 1b (supervisor criteria).

Who can apply?

- 2.2 The Panel is open to firms of solicitors only.

When, where and how to apply

- 2.3 Firms may apply for membership at any time by completing the Commission’s application form and sending it to the CHCCU.

Demonstrating compliance

- 2.4 The onus is upon the Applicant to demonstrate that it meets the Panel membership criteria.

4B-019

Part 3 Considering Applications

Annex 1a and Annex 1b – individual cases

- 3.1 When considering whether requirements F2, F5 and F6 (see Annex 1a) and S1, S2 and S3 (see Annex 1b) have been met, the CHCCU will consider the details of cases submitted as evidence and decide whether each case is, or is likely to be:
- (a) a High Cost Fraud Case;

- (b) a Fraud Case;
- (c) a High Cost Case;
- (d) none of these.

3.2 When categorising a case that has ended prematurely but would have fallen, or is still continuing and is likely to fall, within the definitions in paragraph 3.1, the CHCCU will consider each case on its particular facts, but factors that may be relevant to the decision will include:

- (a) whether the case raised complex issues of law, fact or procedure involving issues such as access to bank accounts, foreign law jurisdictional issues, conspiracy charges or substantial forensic accountancy work;
- (b) whether detailed consideration of extensive documentary evidence or unused material was required;
- (c) whether the defendant was charged with a large number of offences;
- (d) whether the proceedings were transferred to the Crown Court under section 4 of the Criminal Justice Act 1987;
- (e) whether a preparatory hearing was ordered in the Crown Court under section 7 of the Criminal Justice Act 1987;
- (f) the amount of money involved;
- (g) whether the case was investigated or prosecuted by the Serious Fraud Office, Department of Trade and Industry, CPS Special Casework Section, Inland Revenue or Customs and Excise or whether the case was being undertaken by a specially established, dedicated unit within one of these or similar organisations;
- (h) The estimated length of trial;
- (i) The stage in the proceedings when the solicitors ceased to act for the defendant.

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Annex 1a – firm membership criteria – new or developing firms

3.3 Where an Applicant is recently established, or is developing the experience, expertise and capacity required to conduct High Cost Fraud Cases, it may be unable to comply with all of the criteria for Panel membership.

3.4 Where the Applicant is unable to meet the requirements in Annex 1a, provided it meets the criteria in Annex 1b, the approach set out in paragraphs 3.5 to 3.9 will be taken.

New or developing firms – approach

3.5 In order to ensure that the number of firms on the Panel is not limited, as specified in paragraph 1.4, the F2 requirement in Annex 1a may be waived if a firm is classified as new or developing.

3.6 To be classified as new, the Applicant must have been established for no more than 3 years before the date of its application. The CHCCU must be satisfied that this is genuinely a new practice and not, for example, simply a name change for an existing firm.

3.7 Alternatively, to be classified as developing, the Applicant must be able to demonstrate that it has taken active steps to increase its ability to manage High Cost Fraud Cases. Each

application will be judged on its own merits, but examples of evidence that may be used to demonstrate a firm's development include:

- (a) the firm has recruited a fee earner who meets the criteria at Annex 1b; or
- (b) the firm has recruited other fee earners with experience of fraud work; or
- (c) the firm has established a dedicated unit that deals solely with fraud work.

Taking on fraud cases will not, on its own, be accepted as evidence that the firm is developing in this area.

- 3.8 A firm accepted by the CHCCU as new or developing will not be required to meet the F2 requirement at Annex 1a. The Applicant must state in its application that it is applying as a new or developing firm for the application to be considered under paragraph 3.6 or 3.7. If this is not made clear, the application will be assessed in relation to the F2 requirement.
- 3.9 In addition to meeting the criteria F1 and F3 to F6 at Annex 1a, and S1 to S4 at Annex 1b, a firm accepted as new or developing shall satisfy the CHCCU that it is reasonably likely to meet the F2 requirement within 3 years.

Annex 1b Supervisor Criteria

- 3.10 A supervisor may rely on cases conducted at a previous firm to demonstrate compliance with the supervisor membership criteria. Where the supervisor cannot obtain the information needed to demonstrate compliance because it is held by their previous firm, the supervisor should discuss the matter with the CHCCU which will make further enquiries before determining whether or not it is satisfied that the criteria have been met.

Status Enquiries

- 3.11 Panel member firms are required to have passed a Specialist Quality Mark preliminary audit in the crime category or in the case of a new or developing firm have submitted an application and passed a desk top audit, at the office where work on High Cost Fraud Cases is conducted (see Annex 1a, requirement F1). Where the office has only passed a desk top audit temporary membership of the Panel will be awarded. Exceptionally, a quality marked office may be permitted to place staff in a non-quality marked office to handle a case if appropriately supervised. Where status enquiries have not been undertaken for a particular fee-earner as part of the Specialist Quality Mark application process, status enquiries may be undertaken as part of the Panel application process. An adverse report in response to status enquiries may result in an application being refused.
- ...

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...

enquiries have not been undertaken for a particular fee-earner as part of the Specialist Quality Mark application process, status enquiries may be undertaken as part of the Panel application process. An adverse report in response to status enquiries may result in an application being refused.

Decisions

- 3.12 The CHCCU may determine the application in such manner as it considers reasonable.
- 3.13 Where the decision is any other than to allow the application without conditions, written reasons will be given.

4B-020

Part 4 Specialist Fraud Panel Committee and Appeals

- 4.1 Where the CHCCU decision is any other than to allow the application without conditions, the Applicant may appeal to the Specialist Fraud Panel Committee (“the Committee”) that is established to hear appeals under these Arrangements in accordance with Annex 2.
- 4.2 The Applicant shall appeal within 30 days of receipt of the decision against which the appeal is to be made.
- 4.3 All appeals shall be in writing and shall set out the reasons why the Applicant disagrees with the decision and why it believes, in light of the membership criteria and the reasons given, that it meets the Panel membership criteria. The Commission’s staff may obtain and provide information relating to the appeal to the Committee, provided that the appellant receives a copy.
- 4.4 On receipt of an appeal under paragraph 4.1 the CHCCU may reconsider its decision, but if following such reconsideration its decision remains the same, it shall refer the matter to the Committee.
- 4.5 The Committee shall normally consider appeals at the latest within three months of the date on which the appeal was received. The appellant shall have the right to make oral representations and the Committee may, in any event, request personal appearance. The Commission may also be represented at the appeal.
- 4.6 Before making a decision on an appeal the Committee shall consider:
 - (a) these Arrangements and the Panel membership criteria annexed to them;
 - (b) any guidance relating to the Panel;
 - (c) the Applicant’s original application to join the Panel;
 - (d) any subsequent submissions from the Applicant;
 - (e) any information supplied to the Committee under paragraph 4.3;
 - (f) the reasons for the CHCCU decision.
- 4.7 The decision of the Committee will be a majority decision. Where there is no majority, the chair will have a second or casting vote.
- 4.8 The Committee shall make one of the following decisions:
 - (a) allow the Applicant to join the Panel (this may be subject to such conditions as it considers appropriate);
 - (b) refuse the application to join the Panel;
 - (c) any other decision it considers reasonable in the circumstances.
- 4.9 Where the decision is any other than to allow the appeal without conditions, the Committee shall give written reasons.

4B-021

Part 5 Notification of changes and review of Panel membership

- 5.1 ~~5.1~~—Panel member firms working under a VHCC Individual Case Contract must comply with the current contract, contract specification and VHCC Arrangements. Non-compliance will result in removal from the Specialist Fraud Panel.

5.2 Panel member firms shall notify the CHCCU of any changes likely to affect their compliance with the Panel membership criteria.

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~~5.32~~ These changes are likely to be changes in personnel e.g. a supervisor or key fee-earners leaving the firm. "Leaving the firm" includes instances of long-term absence, secondment, or sickness. Other relevant changes may include a partner leaving the firm or a substantial restructuring of a relevant department.

~~5.43~~ While the CHCCU will review membership of the Panel periodically – normally every 12 months – it may review a firm's membership at any time. The purpose of a review is to determine whether the firm remains eligible for membership of the Panel.

~~5.54~~ A firm will cease to be eligible for Panel membership when:

- (a) the Panel membership criteria are no longer met; or
- (b) there is, in the view of the Commission, evidence of such unsatisfactory performance on cases undertaken under contract with the Commission that continued membership of the Panel is no longer justified.

~~5.65~~ On a review of Panel membership, the CHCCU shall make one of the following decisions:

- (a) Panel membership should continue;
- (b) Panel membership should cease;
- (c) any other decision it considers reasonable in the circumstances.

Before making its decision, the CHCCU may request additional information from the firm.

~~5.76~~ If the CHCCU decides that a firm's Panel membership should cease, it will give the firm 30 days' notice of removal from the Panel and give written reasons for its decision.

~~5.87~~ Before the notice under paragraph 5.6 expires or where the decision is other than to allow Panel membership to continue without conditions, the firm may appeal to the Committee and the procedures set out in paragraphs 4.2 to 4.7 and 4.9 shall apply (excluding 4.6(c)). If it does so, the effect of any notice under paragraph 5.6 will be suspended pending the appeal.

~~5.98~~ On an appeal under paragraph 5.7, the Committee shall make one of the following decisions:

- (a) Panel membership should continue (this may be subject to such conditions as it considers appropriate);
- (b) Panel membership should cease;
- (c) any other decision it considers reasonable in the circumstances.

4B-022

Annex 1a Panel Membership Criteria – Firm Membership Criteria and Guidance

The firm must:

F1 have passed a Preliminary Quality Mark Audit at the specialist level in the crime category at the office at which work on High Cost Fraud Cases is conducted.

Guidance

A solicitor's office that has a three year General Criminal Contract will have passed a Preliminary Quality Mark Audit.

There is some discretion where the applicant firm or office has no fee-earner who meets Specialist Quality Mark (SQM) Requirement D3 (Supervisors). As the Panel has its own supervisor requirements, any supervisor meeting those requirements will be of the necessary standard.

Exceptionally a quality marked office may be permitted to run a case using staff placed in a non-quality marked office if appropriately supervised.

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F2 be able to demonstrate substantial involvement in Fraud Cases and High Cost Fraud Cases during the 5 years prior to the application for Panel membership

Guidance

"Substantial involvement" will be evidenced by satisfactory conduct of the defence in:

- (a) 5 High Cost Fraud Cases; or
- (b) 3 High Cost Fraud Cases and 5 Fraud Cases with Total Defence Case Costs of at least £50,000 each; or
- (c) 3 High Cost Fraud Cases and 2 Fraud Cases with Total Defence Case Costs of at least £50,000 each and 5 High Cost Cases.

Whichever combination of cases is submitted, the majority of cases must have been fully prepared for trial.

Where a firm represents two or more defendants on the same indictment, this will be treated as one case for the purpose of this requirement. Where a firm has represented the same client at both a trial and a subsequent re-trial, this will be treated as one case for the purpose of this requirement.

Cases used to evidence compliance with this requirement may be publicly funded or privately funded. The Commission may take account of a number of cases of equivalent subject matter and weight where the firm was prosecuting. However, the majority of the cases used as evidence shall be conducted for the defence.

The mix of cases set out above is intended to provide evidence of the firm's experience, knowledge and capacity to effectively manage Very High Cost Fraud Cases. The CHCCU has discretion to accept other combinations of cases as long as they represent substantially the same balance of size and complexity and concern fraud or serious financial impropriety. An example would be a drugs case with a significant element of money laundering. It is unlikely that the CHCCU would accept cases such as handling stolen goods and theft. In

exercising discretion, the CHCCU must be confident in the ability of the firm to effectively manage Very High Cost Fraud Cases.

The CHCCU will not accept as evidence of meeting this requirement, cases that went to appeal in which the Applicant only acted for the client at the appeal stage.

The CHCCU will not accept, as evidence of meeting this requirement, any Very High Cost Fraud Case that was conducted by a non Panel firm where a representation order was granted after 1 April 2001 whether the case has concluded or is ongoing. The only exception to this is where the non Panel firm requested and received express authority from the CHCCU to continue to run the case. Copies of such correspondence shall be provided as part of the application.

F3 demonstrate an awareness and understanding of the importance of cost control and provide evidence of the ability to control costs and of the management systems in place to ensure that costs are controlled

Guidance

Firms must be aware of the importance of controlling costs, and of eliminating unnecessary, inappropriate or untimely expenditure. This will include the ability to plan and focus work effectively, allocate appropriate levels of fee-earners to work of differing levels of difficulty and complexity and ensure that work is not duplicated. It will also include identifying the most appropriate time to do work, neither too early, when it might prove to be wasted because of the changing circumstances of the case, nor too late, when additional costs might be incurred in order to complete it to unnecessarily tight deadlines.

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F4 be able to demonstrate a systematic and appropriate use of experts and counsel

Guidance

Firms must be able to provide evidence of:

- (a) the appropriate use of experts and counsel, identifying where their use is appropriate and where it is not
- (b) the effective control and management of their work in the case so as to ensure work of the appropriate standard is delivered and duplication avoided
- (c) the ability to ensure that services of the appropriate standard are delivered for the lowest appropriate price

F5 have access to sufficient fee-earning and administrative staff to manage a Very High Cost Fraud Case

Guidance

Firms must be able to demonstrate that they have sufficient permanent staff to manage a Very High Cost Fraud Case. In some circumstances, additional staff may be required. Applicants should be able to demonstrate that they are able to supplement their staff complement at short notice in larger or more complex cases, or at points of particular pressure.

F6 have access to appropriate data and information resources for conducting a Very High Cost Fraud case. The firm must have:

- (a) systems in place to sort and analyse complex data;**
- (b) suitable case management systems in place;**
- (c) sufficient support for operating the case management systems.**

Guidance

Appropriate physical/information resources will vary depending upon the specific case. These may include: up-to-date reference materials including relevant journals; case management systems appropriate for large actions; a database of relevant experts; information retrieval systems; appropriate office equipment; e-mail facilities; access to the internet.

Firms must demonstrate that they have arrangements for the management, accommodation, and retrieval of the paper files involved in a Very High Cost Fraud.

The Commission will be looking for evidence of systematic planning and organisation of casework, specifically efficiency of approach in timetabling and in allocating work. We will also be looking for objectivity in case management, and a realistic and cost effective approach to case strengths and weaknesses.

Firm Membership Criteria General Guidance

The Commission will want to consider the history of an Applicant firm's involvement in Fraud and High Cost Cases. Where appropriate, the CHCCU will consult with appropriate organisations about any High Cost Fraud Case in which a firm has been involved.

Applicants for membership of the Panel may be subject to status enquiries, including the Office for the Supervision of Solicitors and the Solicitors' Indemnity Fund.

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These criteria are a 'rolling requirement'. That is, the firm is required to meet each of the requirements at any one time.

Annex 1b Panel Membership Criteria – Supervisor Membership Criteria and Guidance

The supervisor must:

S1 in the last 5 years, have substantial involvement in High Cost Fraud Cases

Guidance

“Substantial involvement” will be evidenced by satisfactory conduct of the defence in:

3 High Cost Fraud Cases; or

2 High Cost Fraud Cases and 3 Fraud Cases with Total Defence Case Costs of at least £50,000 each.

Whichever combination of cases is submitted, the majority of cases must have been fully prepared for trial.

The supervisor must have carried out a leading and/or substantial role in all of these cases. This will involve either:

- (a) the overall supervision of the case; or
- (b) sole control of a number of important elements of the case, such as
 - (i) instructing experts;
 - (ii) taking the client’s instructions;
 - (iii) instructing counsel;
 - (iv) identifying and dealing with complex legal issues relating to fraud work.

Where a firm represents two or more defendants on the same indictment, this will be treated as one case for the purposes of this requirement. Where a firm has represented the same client at both a trial and a subsequent re-trial, this will be treated as one case for the purposes of this requirement.

Cases used to evidence compliance with this requirement may be publicly funded or privately funded. The Commission may take account of a number of cases of equivalent subject matter and weight where the firm was prosecuting. However, the majority of the cases used as evidence shall be conducted for the defence.

The mix of cases set out above is intended to provide evidence of the supervisor’s experience, knowledge and capacity to effectively manage Very High Cost Fraud Cases.

The CHCCU will not accept as evidence of meeting this requirement, cases that went to appeal in which the Applicant only acted for the client at the appeal stage.

The CHCCU will not accept, as evidence of meeting this requirement, any Very High Cost Fraud Case that was conducted by a non Panel firm where a representation order was granted after 1 April 2001 whether the case was concluded or is ongoing. The only exception to this is where the non Panel firm requested and received express authority from the CHCCU to continue to run the case. Copies of such correspondence shall be provided as part of the application.

S2

- (a) **during the last 3 years, have conducted a total of 1050 hours or**
- (b) **in any 2 of the last 3 years, have conducted a total of 700 hours, of working on**
 - (i) **Fraud Cases and/or cases involving serious financial impropriety, such as a drugs case with a significant element of money laundering.**

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Guidance

Experience of working with Fraud Cases is a critical factor in the quality of the supervisor's own work, and therefore in the experience and expertise they are able to impart to those being supervised. Length of experience is therefore based on the minimum length of time that it is likely to take to acquire the necessary experience.

Experience would ordinarily be gained in a continuous period immediately prior to the audit or application to join the Panel. Career breaks during that period may be acceptable providing the overall requirement can be met.

If requirements S1, S3 and S4 are met in full, then discretion may be applied when assessing a proposed supervisor against this criterion. Discretion will only be applied when a proposed supervisor is involved in a current Very High Cost Fraud Case. A non Panel supervisor may only be involved in a current Very High Cost Fraud Case if the firm and proposed supervisor have express authority from the CHCCU to run the case.

If discretion is exercised, a lesser number of hours may be accepted as satisfying this criterion provided that the proposed supervisor has conducted a minimum of 600 hours in any 2 of the last 3 years.

- S3 in the last 3 years, have conducted 1050 hours of crime work (in addition to that evidenced at S2 above)**

Guidance

These 1050 hours are in addition to those evidenced at requirement S2 and represent $\frac{1}{3}$ of a practitioner's fee-earning time over the 3 year period.

This work may be on fraud cases or any other crime cases.

- S4 for each of the previous 8 years, have held an unconditional practising certificate**

Guidance

In some circumstances the Commission may accept a conditional practising certificate (or a certificate that has had a condition in the previous 8 years).

In some circumstances, the Commission may accept an applicant firm's supervisor who has held a practising certificate for less than 8 years. It is likely this will only include instances where the supervisor has conducted relevant work at a satisfactory level

immediately prior to holding a practising certificate; for example, where the supervisor was previously a barrister, or has transferred jurisdiction.

When considering whether to accept a supervisor who has held a practising certificate for less than the required 8 years, the Commission will consider to what extent the supervisor meets requirements S1 to S3.

In any event, the Commission will not accept a proposed supervisor who has less than 6 years post admission experience as a solicitor or less than 6 years post admission experience as a practising barrister.

Supervisor Membership Criteria General Guidance

The supervisor must be a member of the Applicant firm. This normally means that the supervisor is employed as a fee-earner by the Applicant firm. In some circumstances the proposed supervisor may be a consultant for the Applicant firm.

It is envisaged that each firm will employ at least one full time supervisor. There may be occasions where a part time supervisor will be accepted by the CHCCU. Each application relying on a part time supervisor will be judged on its own merits.

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In all cases the following will be required:

- (a) written confirmation that the proposed supervisor is employed by or a consultant with the Applicant firm;
- (b) written confirmation that the supervisor will supervise cases for no less than 15 hours per week for the Applicant firm;
- (c) written acknowledgement from the Applicant firm, that by utilising a part time supervisor, it may not be able to run a full Very High Cost Fraud caseload, by virtue of the fact that a proportion of the supervisor's time will be spent supervising another firm; and
- (d) written acknowledgement from any other firm at which the supervisor undertakes work, that it understands the proposed new arrangement and the effect that it will have on the firm, namely that if the supervisor in question is the only supervisor, it may restrict the number of Very High Cost Fraud cases it can run.

In any event, no individual or fee-earner may act as a supervisor to more than two firms at the same time.

Applicants for membership of the Panel will be subject to status enquiries, including the Office for the Supervision of Solicitors and the Solicitors' Indemnity Fund.

For the avoidance of doubt, individuals must also meet the following SQM requirements: D3.1 (Named category supervisor), D3.3 (Supervisor skills), D3.4 (Supervisors' legal training), D3.5 (Conditions for supervision) and D4 (Operation of the supervisory role).

Annex 2 Specialist Fraud Panel Committee

Functions of the Committee

1. The Specialist Fraud Panel Committee (“the Committee”) is appointed under paragraph 4.1 of the Specialist Fraud Panel Arrangements 2002 (“the Arrangements”). The purpose of the Committee is to hear appeals from decisions of the CHCCU under the Arrangements.
2. Except so far as the procedures of the Committee are regulated by the Commission or these Arrangements, the Committee shall have power to regulate its own procedure and the ruling of the chair on any issue of procedure arising at any meeting shall be final.

Role

3. The role of external members of the Committee is to bring their experience and expertise to bear on decisions under the Arrangements. It is not their role to represent a particular interest group. The Chair of the Committee may, where it is considered appropriate in the particular circumstances of any case, permit any person to attend before the Committee to make representations. Otherwise the Committee will consider cases on the basis of the papers submitted.

Composition

4. When considering applications, the Committee will normally sit as a Committee with a member of the Commission as Chair, one nominee of the Law Society, one representative of the Bar Council, and one official of the Commission, normally a Regional Director.

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Location

5. Meetings of the Committee will usually take place in London. There may be circumstances in which a meeting at one of the Commission’s regional offices may be more appropriate.

Frequency of Meetings

6. Meetings of the Committee will be held as required to deal with appeals. Meetings will not normally exceed half a day in duration.

Committee Procedures

7. The Committee will operate in accordance with the Arrangements.

Appointments

8. The initial term of appointment to the Committee will be for two, three or four years. Appointment will be made by the Chair of the Commission on the recommendation of the Chair of the Committee.

Any defect in the appointment or continued membership of the Committee shall not affect the validity of any decision by the Committee.

Reappointments

9. An external member's appointment to the Committee may be renewed by the Chair of the Committee with the prior approval of the Chair of the Commission for a further successive period of one, two, three or four years at a time provided that the total period of service shall not normally exceed ten years.

Retirement

10. External members of the Committee shall retire upon reaching the age of sixty-five during the term of his or her appointment. The Chair of the Committee, with the prior approval of the Chair of the Legal Services Commission, may waive this requirement unless the member concerned has reached the age of seventy years.

Appointment Criteria

11. All members of the Committee must agree to operate in accordance with the Arrangements and adhere to any guidance given by the Commission on them.
12. Lawyer members should ideally have three years experience of criminal defence work since qualifying and, in particular, of High Cost and Fraud Cases.
13. An applicant to the Committee who is a solicitor should not have any committee decisions currently recorded against them at the Office for the Supervision of Solicitors (OSS). (OSS retain such decisions for five years).
14. An applicant to the Committee who is a solicitor must not have any adverse findings or orders of the Solicitors Disciplinary Tribunal recorded against them.

Propriety Issues

15. Members of the Committee must comply with the codes and rules that are applicable to Commission membership, in particular the rules relating to political activities, confidentiality, conflicts of interest and hospitality and gifts.

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Fees and Expenses

16. External members of the Committee who are not attending in their capacity as employees will receive a fee for performing their duties, at the rate agreed with the Lord Chancellor's Department and approved by the Treasury for Funding Review Committee members. Reimbursement of travel and subsistence will be made for actual expenditure incurred up to maxima approved by the Treasury.

Termination

17. The Commission may if it thinks fit, remove from office any member of the Committee. If it does so it shall give reasons.

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Very High Cost Criminal Cases Arrangements 2004

4B-025

Part 1 Preliminary

Introduction

- 1.1 These Arrangements are made by the Legal Services Commission. They set out the arrangements that apply to cases that are, or are likely to become, Very High Cost Cases – so that such cases may be covered by individual case contracts.

1.2 1.2—These Arrangements do not apply to any VHCC where the date of the Representation Order is on or after the VHCC Panel start date, as under the VHCC Panel Contract, VHCC's (fraud and non-fraud) may only be carried out by VHCC Panel members.

- 1.3 The CCU will carry out the functions under these Arrangements, in accordance with any guidance and directions issued by the Commission.

Interpretation

The definitions in the Contract Specification apply to these Arrangements.

- 1.43 In these Arrangements:

“Barrister” or “Counsel” includes a solicitor with higher court advocacy rights;

“Commission” means the Legal Services Commission;

“Committee” means the committee with the function of determining appeals under these Arrangements, the membership of which will be drawn from the Review Panel in accordance with the Legal Services Commission Review Panel Arrangements 2000.

“CCU” means the Commission’s Complex Crime Unit;

“ICC” means an individual case contract;

“Fraud Case” means a case in which the offence with which the defendant is charged is primarily, or substantially, founded on allegations of fraud or other serious financial impropriety or involves complex financial transactions or records;

“Terrorism Case” means a case in which the main offence with which the defendant is charged, whether at common law or under statutory enactment, is primarily, or substantially, founded on allegations of terrorism as defined in the Terrorism Act 2000;

“Very High Cost Case” means a case with regard to which if the case proceeds to trial, that trial would be likely to last for 41 days or longer;

“Very High Cost Fraud Case” means a case that is a Fraud Case and a Very High Cost Case.

4B-026

Part 2 Notifying cases to the CCU

Introduction

- 2.1 Annex A sets out guidance on defining criminal cases that are likely to become Very High Cost Cases and Very High Cost Fraud Cases.

When to notify

- 2.2 A solicitor, acting under a Representation Order must notify the CCU as soon as it appears that the case will be, or is likely to be, a Very High Cost Case.

What to notify

- 2.3 The solicitor's notification must include the following information:

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- (a) the client(s) name(s);
- (b) the prosecuting authority;
- (c) the name of the case;
- (d) relevant case references (e.g. Representation Order number, prosecuting authority's reference);
- (e) names and other relevant details of co-defendants and the names of their representing solicitors' firms;
- (f) the charges faced;
- (g) a summary description of the case, including an opinion on whether the case is a Very High Cost Case or a Very High Cost Fraud Case (see Annex A) and if so, why;
- (h) the current status of the case;
- (i) the probable timetable by which the case will proceed;
- (j) the date of the Representation Order;
- (k) the work undertaken by the solicitor's firm to date and, if publicly funded, the value of work undertaken; and
- (l) whether the solicitor's firm wishes to undertake the case.

4B-027

Part 3 The decision to enter into a contract

Decision

- 3.1 On receipt of a notification, the CCU will decide (a) whether the case meets the Annex A criteria or whether the position is unclear; and (b) whether, if the solicitor's firm wishes to undertake the case, they have the experience and resources to conduct the case and, if it is a Very High Cost Fraud Case, they are a member of the Specialist Fraud Panel.

If “no” or “unclear”

- 3.2 If the CCU decides that the case does not meet the Annex A criteria or that the position is unclear, the case will continue without an ICC but the solicitor may be invited to report to the CCU at a later date.

If “yes”

- 3.3 If the CCU decides that the case does meet the Annex A criteria, it will decide on a case by case basis, with regard to its capacity to manage ICCs and the extent to which the case has already progressed, whether or not an ICC should be entered into.
- 3.4 If the CCU notifies the solicitor that it wishes to enter into an ICC with the solicitor’s firm and the solicitor’s firm wishes to undertake the case, the solicitor must, as soon as is practicable and in any event within 14 days, submit a case plan and first stage plan to the CCU.
- 3.5 On receipt of the case and stage plan the CCU will appoint a Contract Manager who will arrange a meeting with a representative of the solicitor’s firm to discuss the case and if satisfied, agree the stage plan and sign the contract.

Which firm?

- 3.6 If the solicitor’s firm does not wish to undertake the case or if the CCU serves notice that it does not intend to enter into a contract with the client’s current representatives or, if it is a Very High Cost Fraud Case, the firm is not a member of the Specialist Fraud Panel, the firm shall notify the client of his or her right to select another solicitor’s firm to undertake the case. In these circumstances, unless the CCU directs ...

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...

otherwise, no further costs will be payable to the solicitor’s firm in respect of the case from such date as the CCU specifies.

Which rates?

- 4.1 The CCU shall assign each Very High Cost Case to one of the four categories referred to in Schedule 5 of the Criminal Defence Service (Funding) Order 2001 in accordance with the criteria set out in Annex B of these Arrangements. It may also elect to apply the provisions for remuneration in Schedules 2 and 4 of the Criminal Defence Service (Funding) Order 2001 to the whole or part of any Very High Cost Case if the Representation Order was made on or before 1 July 2004.
- 4.2 The CCU shall assign each solicitor or other fee-earner (other than a barrister acting as an advocate) providing funded services in relation to a case that is a Very High Cost Case to one of the three levels referred to in Schedule 5 of the Criminal Defence Service (Funding) Order 2001 in accordance with the criteria set out in Annex C of these Arrangements.

Part 4 Appeals

- 4.1 Where the Contract Manager and firm of solicitors cannot agree a stage plan the Contract Manager will determine a stage plan which he or she is prepared to contract.
- 4.2 Where paragraph 4.1 applies the Contract Manager will give oral reasons for the decision at the time.
- 4.3 The contracted firm, or Counsel instructed under the contract, may appeal to the Committee against any decision that the Contract Manager makes regarding individual items on a stage plan. Pending appeal and without prejudice to it, the contracted firm or Counsel may enter the contract on the basis of the stage plan approved by the Contract Manager in order to enable work to continue.
- 4.4 The appeal shall be in writing, setting out details of the item(s) in dispute and give reasons why the firm or Counsel disagree with the Contract Manager's decision.
- 4.5 Any appeal must be lodged, with the CCU, within 14 days of receipt of the original decision.
- 4.6 On receipt of the appeal the Contract Manager shall give his or her reasons for the decision in writing within 14 days.
- 4.7 The appellant shall have a right to attend the appeal hearing.
- 4.8 The Committee may ask an appellant to attend and may require submission of any further evidence it requires.
- 4.9 Where the appellant attends, the Contract Manager also has a right to attend.
- 4.10 The Committee will consider the following: these Arrangements, any relevant guidance and regulations, the Contract Manager's reasons, the appellant's reasons, any oral submissions and any other relevant matters.
- 4.11 The Committee may (a) dismiss the appeal or (b) allow the appeal in whole or in part. The Committee shall give reasons for its decision.
- 4.12 The decision of the Committee will be a majority decision. Where there is no majority, the chair will have a second or casting vote. The decision of the Committee shall be final and binding on all parties. However, the Committee may invite any party to submit further information before it makes its decision. Any such information must be supplied within 14 days of notification of the request unless the Committee specifies a different deadline.
- 4.13 Where the decision is any other than to allow the appeal in full, the Committee shall give written reasons.

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4B-029

Part 5 At the end of the contract

- 5.1 The contract will normally terminate when the case is disposed of (including where appropriate advice is given on any appeal) but may terminate, before then, in accordance with its terms.
- 5.2 At the end of every case the CCU and contracted solicitors will conduct a post-case review of the performance of CCU and of the contracted solicitors under the contract with a view to identifying learning points to improve performance under future contracts.

Annex A

4B-030

Part 1 Guidance on Very High Cost Cases

A1.1 Factors that indicate that a case is likely to become a Very High Cost Case may include the following:

- (a) the case raises complex issues of law, fact or procedure;
- (b) detailed consideration of extensive documentary evidence or unused material is necessary;
- (c) the defendant is charged with a large number of offences;
- (d) there are many defendants;
- (e) the case is investigated or prosecuted by the Department of Trade and Industry, CPS Special Casework Section, the Inland Revenue or Customs and Excise (or is being undertaken by a specially established, dedicated unit within one of these or similar organisations); or.
- (f) the case is a Terrorism Case.

4B-031

Part 2 Guidance on Very High Cost Fraud Cases

A2.1 In addition to the factors listed in A1.1 above, other factors that indicate that a case is likely to become a Very High Cost Fraud Case may include the following:

- (a) substantial sums of money are involved;
- (b) the case raises complex issues of law, fact or procedure involving issues such as access to bank accounts, breaches of revenue or tax laws, foreign law jurisdictional issues, conspiracy charges or substantial forensic accountancy work;
- (c) the prosecuting authority is the Serious Fraud Office (with the exception of prosecutions arising under section 2 of the Criminal Justice Act 1987).

Annex B

4B-032

Criteria for setting hourly rates for Very High Cost Fraud Cases

The CCU shall decide whether a case is a Very High Cost Fraud Case and which category it falls into. The CCU may review and amend its decision each time it reviews a stage plan. The contracted firm, or Counsel instructed under the contract, may appeal under Part 4 of these Arrangements against such a CCU decision. A different category may apply at different stages of a case, for example, the prosecution may present more evidence than expected, or may drop one of a number of charges. The CCU may publish further guidance on interpretation of the criteria in this Annex.

4B-033

Block A

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

4B-034

Block B

The value of the fraud exceeds:

- (a) £10m
- (b) £2m.

The volume of prosecution documentation (excluding unused material) exceeds:

- (a) 30,000 pages
- (b) 10,000 pages.

The total costs of representing the defendant(s) is likely to exceed:

- (a) £500,000
- (b) £250,000.

The length of the trial is estimated at:

- (a) over 20 weeks.

4B-035

Categorisation of cases

Category 1: 4 criteria from Block A are met, and 4 a's from Block B.

Category 2: 3 criteria from Block A are met and at least 2 a's or b's from Block B.

Category 3: All other Very High Cost Fraud Cases.

Category 4: non-fraud Very High Cost Cases only

4B-036

Criteria for setting hourly rates for Non-Fraud Very High Cost Cases

Block A

1. Must be a class 1 or 2 offence or be a serious drug case.
2. The maximum sentence for the offence is imprisonment for life or over 30 years.
3. The case is likely to attract national interest.

4. If the offence is of a violent or sexual nature, there are multiple victims or if a sole victim, there is something significant about the crime. If the case involves drugs, their total value is estimated to exceed £10m.

Block B

The volume of prosecution documentation (excluding unused material) exceeds:

- (a) 10,000 pages
- (b) 5,000 pages.

The total costs of representing the defendant(s) is likely to exceed:

- (a) £400,000
- (b) £200,000.

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4B-037

Categorisation of cases

Category 1: Terrorism Cases

Category 2: 4 criteria from Block A are met and 2 (a) factors from Block B.

Category 3: 3 criteria from Block A are met and at least 1 (a) or (b) factor from Block B .

Category 4: all other Very High Cost Cases

Annex C

4B-038

Definition of levels of fee-earner

A fee-earner is someone who performs work for a firm of solicitors for which it is reasonable to charge a fee. We will decide which level a fee-earner falls into and will consider the level of each fee-earner each time we review a stage plan. A right of appeal arises against any decision of the Contract Manager as to the level of a fee-earner in accordance with Part 4 of these Arrangements. A fee-earner may be at different levels in different cases.

4B-039

Very High Cost Fraud Cases

A Level A fee-earner must:

- FA1 be a solicitor or employed Barrister; and
- FA2 have 8 years post-qualification experience; and
- FA3 either:
 - (a) meet Requirements S2 of the Legal Services Commission's Specialist Fraud Panel Arrangements Annex 1b; or
 - (b) have a particular specialism that is relevant and important to the case.

Notes:

At FA3, if the fee-earner is not currently a supervisor at a Specialist Fraud Panel firm, that fee-earner will be required to provide evidence, by way of billing guides, to show that he or she has fulfilled criterion S2 of Annex B of the Specialist Fraud Panel Arrangements 2002. FA3(b) requires the fee-earner to have a recognised qualification in a particular field which is relevant to a significant aspect of the defence case, or otherwise the fee-earner must be able to show clear specialist experience in this field.

4B-040

Non-Fraud Very High Cost Cases

A 'Level A' fee-earner must:

NFA1 be a solicitor or employed Barrister; and

NFA2 have 8 years post-qualification experience; and

NFA3 either:

- (a) during the last 3 years, have conducted a total of 1,050 hours of working on other serious crime cases; or
- (b) in any 2 of the last 3 years, have conducted a total of 700 hours working on other serious crime cases; or
- (c) have a particular specialism that is relevant and important to the case; or
- (d) have a combination of NFA3(a) and NFA3(c), or NFA3(b) and NFA3(c).

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Notes:

For NFA 3(a) and (b), evidence (by way of billing guides) that these hours have been met must be provided to the CCU.

4B-041

All Very High Cost Cases

A 'Level B' fee-earner must

B1 either:

- (a) be a solicitor or employed Barrister; or
- (b) be a Fellow of the Institute of Legal Executives; and
- (c) have substantial knowledge and experience of criminal defence casework. Generally this would be expected to include 10 years experience of criminal defence casework and some experience of serious and complex criminal cases.

A 'Level C' fee-earner must

C1 either:

- (a) be a trainee solicitor; or
- (b) be a legal executive (although note B1(b) above); or
- (c) be any other person conducting fee-earning work.

