

Guidance on the Processing of CDS5 Forms

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Guidance on the Processing of CDS5 Forms

1. – General Checks – All Areas

- Check all sections of the form are fully completed
- Ensure a breakdown of work is provided
- Ensure form is signed by a solicitor or fellow of the institute of Legal Executives (FILEX) and dated
- Ensure CDS1, 2, 3 or previous CDS5 application is provided as appropriate
- Check current version of the form is used.

If any of the above is missing or incomplete, reject the form in accordance with our Further Information Policy.

2. – Detailed Checks – All Areas

- Has the initial limit or previous limit been exceeded?

If yes, disallow costs over the limit and part grant

- Has a full outline of the work to be undertaken been provided, are reasons provided as to why the work needs to be undertaken?

If the work to be undertaken has not been justified, reject the form.

- Has a full breakdown of solicitor's costs been provided?

Where preparation greater than 6 hours is claimed, has the work to be undertaken been fully detailed? If the work is not fully detailed, reject the form and ask for a comprehensive breakdown. Solicitors can claim up to 2 units for preparation of the CDS5.

- Are the CDS forms fully completed?

If the client has not signed a fully completed CDS1, 2, or 3, the client is not yet in receipt of advice and assistance and there is no funding in place to be extended. Reject the form.

- Previous Advice

Advice and Assistance cannot be provided where the client has already received advice in this matter within the last 6 months unless there has been a material change of circumstance. This should be recorded on the CDS forms. See the UCC for precise detail on the exceptions for claiming multiple times within the time period. (Prison Law: UCC B4.1.7; Appeals UCC B3.1.11)

- Rounding up.

The costs incurred plus funds requested should equal the total amount sought. Any work in progress should be fully detailed on the form. If the funding limit has not been reached and no work in progress is detailed, then it is expected that the current funding limit can be used to fund the work

requested. The funding limit should be the precise amount needed to fund the work outlined; rounding up is not permitted.

3. – Counsel – All Areas

Counsel often provide advice for a fixed fee of around £200-£400. This can be granted so long as the request for advice from Counsel is justified. Where higher sums are sought, a full breakdown of Counsel's times is required. The fee for an advice from Counsel includes any reading necessary to prepare an advice.

Counsel's rates should not exceed £80.00 per hour. If Counsel quotes a fixed fee in accordance with the fees mentioned above, but this fee is calculated based on a higher rate, that is acceptable, but if further work is necessary so that Counsel's advice falls outside the fixed fee range, then the hours requested will still only be allowed to a maximum of £80.00 per hour.

When preparing advice, Counsel will need to consider key or relevant documents from the case papers, as well as what may be a detailed brief. This work should be remunerated at Counsel's rate. However, if Counsel has merely been sent all the papers and asked to consider them and prepare an advice, then standard legal aid rates should apply to Counsel considering the papers.

If Solicitors make a request for both Solicitors and Counsel to consider the papers in a case, or have considered all the papers and then still simply send all the papers to Counsel, time should be allowed for only one person to read the papers, at legal aid rates, but the work can be undertaken by either Counsel or the Solicitors at their discretion.

Exceptional Cases

Our presumption will always be to grant Counsel's fees at the standard rate outlined above. However, if Solicitors provide sufficient and detailed justification as to why a case is exceptional, then a higher rate can be considered.

A higher rate should only be authorised in exceptional cases such as:

- Murder/Infanticide cases involving complex medical evidence (i.e. shaken baby cases)
- Serious Fraud cases involving contested expert financial evidence
- Terrorism cases involving novel or complex points of law.

This is not an exhaustive list.

The key test to consider is whether the case is exceptional when compared to other cases of the same nature. The fact that the case is a murder case will not make it exceptional, it would have to be an exceptional murder case. It is for the Solicitor's to outline why a higher rate is justified and if we do not feel sufficient justification has been provided then Counsel's rate should be

reduced to the standard rate. Solicitors will then be able to provide further representations to go before an Independent Costs Assessor on appeal.

Decisions on the use of higher rates for Counsel should always be referred to a Senior Caseworker.

4. – Travel – All Areas

The Unified Criminal Contract para A16 provides strict limitations on travel for all areas of work.

As a general rule, solicitors should not accept instruction at a distance greater than a 2-hour return journey (i.e. 1 hour each way) to the Court, Police Station, Client or Prison.

ANY travel greater than 2 hours should be questioned. If it is not justified on file, you can reject to request justification, or simply assess travel and mileage off.

In certain circumstances, outlined in the contract, travel of up to 4 hours return (i.e. 2 hours each way) may be justified.

- No more local solicitor available
- The clients problem is so specialist that no more local solicitor could undertake the work
- The solicitor has significant knowledge of the case or client to justify re-involvement in the clients matter
- The local court is more than 2 hours return or the local remand centre where the client is held is more than 2 hours return.

Where it is claimed that the problem is specialist or the solicitor has significant knowledge of the client or the case, details of this should be provided as justification. The justification must be provided on the form, if it is not, reject the form or assess the travel.

The need to travel over 2 hours (i.e. more than 1 hour each way) should be balanced against the increasing costs of travelling in a case. The greater the distance, the greater the justification that will be needed.

It will be unlikely for return travel over 4 hours to ever be justified. Only in exceptional circumstances would this be justified, and the only example provided by the contract is where a client is in prison and is moved to a different prison during the course of the sentence, as this is outside the solicitor's control. The CDS1 will usually reflect the fact that the client was local originally. In those circumstances, travel of up to 6 hours should be allowed.

The argument that multiple clients can be seen at a distant prison should be discounted because it will not always be possible to see multiple clients (A16.8). On long distance travel cases, solicitors should also outline if they have attempted to use video link facilities from a local court or facility.

The reasons for lengthier travel must be fully detailed on the claim. Travel over 6 hours will only be justified in the most exceptional cases. Solicitors would need to provide highly compelling reasons as to why such travel should be allowed, and the presumption will be that more cost effective alternatives exist, either through the use of video links, correspondence, agents or by transferring the case to a more local provider.

For London providers, the basic minimum travel to be allowed is 4 hours instead of 2.

5. – Criminal Investigations

Should be pre-charge work only. If the client has already been charged, work should be funded under the Representation Order or Advocacy Assistance as applicable.

5a - Applications for Interview outside the scope of the Police Station scheme.

The police station scheme only provides for advice where the client is interviewed under caution by a constable or officer of HMRC. Constable is defined as a police officer, a British transport police officer, an officer of HMRC and any other official with the power of arrest (CBAM 13.1.2).

Interviews by the DWP, TV Licensing and local government do not fall under this scheme, even if the interview is conducted under caution and in accordance with PACE because officers of those and similar organisations do not have a power of arrest. These interviews are funded by Advice and Assistance.

Extensions for interviews are usually only seen in complex benefit fraud cases where a client may be interviewed multiple times.

Solicitors should justify all times claimed, travel should be local travel only.

Consider sufficient benefit test. The result of a TV Licensing prosecution is unlikely to result in loss of liberty, is the advice justified?

5b - Applications for defence post mortem.

In murder/manslaughter cases it will often be necessary to get a 2nd post mortem prior to charge. Where the client is on bail, this is funded by advice & assistance.

Applications should be submitted with a quote from the pathologist, CDS4 guideline rates apply, usually maximum of £800 fixed for post mortem plus 6

hours work. Cost may also include Mortuary fees, which are always payable, and sometimes cosmetic fees. These are only payable where the delay that requires the use of cosmetics has been the fault of the defence.

Occasionally, a request may be received for a 3rd post mortem. If the 2 previous post mortems come to different conclusions, then this may be payable, but defence solicitors should ask if the Crown will jointly fund an independent pathologist to determine between the defence and prosecution reports. If the 2 previous reports agree with each other, then no further report is necessary.

5c – Warrants of Further Detention

Funded as Advocacy in the Investigations class, a separate claim is made in respect of this work, but under the same UFN as the police station claim. Funding extends to cover hearings before a Magistrate, High Court Judge, Judicial Authority or a Senior Judge. The work extends up to giving notice of an appeal.

5d – Use of Counsel

Counsel in this class of work is likely to be limited and only necessary in rare cases.

For Advice and Assistance, UCC B1.2.15 requires all work to be claimed at hourly rates. For Warrants of Further Detention and Armed Forces Custody Hearings, the use of Counsel is specifically prohibited.

6. – Criminal Proceedings

Should only be Advocacy Assistance.

As most areas that were on a CDS3 are now prescribed proceedings, it would be very unusual to receive a request for funding extension in this area. The initial limit of £1500 is almost always sufficient to cover what few cases arise in the remaining areas.

6a – Appeals Magistrates to Crown

An appeal to the Crown Court against the imposition of an ASBO or other prescribed order made in the Magistrates Court is funded by a CDS3.

An application to the Crown Court to vary or discharge a prescribed order made in the Crown Court is NOT advocacy assistance but is funded by a Crown Court Representation Order. Prior to August 3rd 2009, there was no payment available for this. From August 3rd, there is a litigator fee available.

6b – Use of Counsel

Counsel can be instructed in these matters, and the decision to instruct is a devolved power. However, the instruction is always on an unassigned basis and the Maximum Fee Principle will apply. The one exception is that the

Contract specifically allows for time to be claimed in respect of briefing Counsel.

7. – Prison Law

This area covers a wide range of Prison Law matters. Much of the work requested will follow a typical format: visiting the client to get instruction, considering paperwork from the prison, preparing written representations, visiting the client for final instructions, submitting those representations and then advising the client of the outcome.

If the representations are refused, further work will be undertaken to consider this and advise the client of his next steps. The case may start to proceed to judicial review.

In some cases, the next stage from written representations is an oral hearing, which would require an additional visit with the client and preparation for the hearing as well as advocacy.

Letters and call will be extensive over the course of the case. Prisons are often slow to respond and need to be frequently chased. In addition, solicitors will often have to correspond with multiple people within the prison, probation service, NOMS, MoJ, Home Office, client, client's family, Counsel and the LSC to achieve a result.

It is not unusual to see requests for up to 25-30 letters and 25-30 calls on a single application. Requests for more than this should be queried and/or assessed if they are not fully justified on the file.

The following are some common areas of prison law funding, but they are by no means exhaustive. Prison law funding is available to deal with any LEGAL issue within the prison environment, where there is a clear benefit to the client, usually in terms of progression to release, prevention of sentence being increased or protection of human rights.

Some firms may wish to represent their client in formal complaints to the prison, prison service or the Ombudsman. A complaint may be used to spur the prison into action where nothing has previously happened, but if the client has already achieved the result and the complaint is just a complaint about how long it took for example, then there is no benefit to the client and this work should be refused.

The sufficient benefit test should be reviewed at all stages on the case and on each application, the solicitors should be able to show how the work they are undertaking brings a benefit to the client. In the example of making a complaint about quality of service above, if the result has already been achieved, the only benefit to the client will be personal satisfaction or an apology, neither of which qualifies under the sufficient benefit test.

7a – Jurisdiction

A prisoner in a Scottish Prison will normally be subject to Scottish Law and the Scottish Legal Aid Board should fund any advice and assistance to the client.

However, in some circumstances, a prisoner held in a Scottish Prison will remain subject to the Governor of the English prison he originated from. Where the English Governor still has jurisdiction, the clients issues regarding sentence planning, parole and transfer will be subject to English law and properly funded by the LSC. Internal matters within the Scottish prison, such as treatment and discipline, which the Scottish Governor deals with, are subject to Scottish Law.

When a client is held in a Scottish prison, the CDS5 should fully indicate the circumstances in which he is held there and ascertain which Governor has jurisdiction over the issues that advice is being sought on.

7b – Re-categorisation Review, Sentence Planning and Transfers

Applications to downgrade a prisoner to more open / less secure conditions or transfers to another prison for the availability of courses or access to family.

Prisoners do not simply go to prison and that's it. Throughout their sentence, most prisoners will steadily move to more open conditions in preparation for eventual release. They will also be required to undertake various courses to address their offending behaviour and reduce the risk they present to society. Not every course is available at every prison.

Transfer matters should require minimal work and can usually be undertaken by written representations to the Prison Governor.

These matters will usually require 2 meetings with the client, for initial instruction and final instructions/outcome; the rest of the work can be undertaken by letter.

If representations are refused, internal appeal proceedings should be followed. Counsel's advice may then be required to judicially review decision as a last resort.

Re-categorisation reviews from Cat B down can be more complex. Re-categorisation will depend upon the client having reduced his risk, usually through successful completion of courses.

Category A re-categorisation is the most complex and will involve consideration of the client's security dossier. Restrictions on a Category A prisoner's are the most intense and this review is likely to be the most significant for the client. Face-to-face meetings are more likely to be required for such a review given its importance.

The security dossier records all the information that NOMS holds on the client, and will include security reports, course reports, risk management

assessment and probation reports. Dossiers vary in size, but an average seems to be about 200 pages. Consideration of the Dossier is based on 2 minutes per page.

The dossier is a bundle of documents that will be very familiar to a prison law solicitor and requests for more than 2 minutes per page to consider the dossier should be resisted. While some of the reports may be complex, this is a prison law solicitor's area of expertise and they would be expected to be familiar with the contents. While some documents in the dossier will be complex, others will be very straightforward and 2 minutes per page is considered a reasonable time to consider the entire dossier.

It is not unusual to see requests for 6-8 hours preparation for re-categorisation matters, up to 6 hours to consider the dossier and then up to 2 hours to draft representations. Representations for Cat A reviews may be more complex.

Re-categorisation and sentence planning go hand in hand, and if the client's sentence plan is unachievable, either due to being unrealistic or because courses are not available, this would need to be challenged, again by written representations.

Depending on the content of the dossier, independent psychological and psychiatric reports may be required to combat probation service reports. CDS4 guideline rates should be applied.

7c – Adjudications

Whilst in prison, a client may be subject to internal disciplinary hearings for matters such as failing mandatory drugs tests. If found guilty, these have a negative impact on the client's sentence planning and can also result in additional days being added on to the sentence. These matters are usually dealt with by written representations to the Governor, but Oral hearings may be required.

Clients initial instructions will be required, documentation received from the prison and representations prepared in response. Independent expert evidence may also be required at CDS4 guideline rates, and time would be needed to consider this. If an oral hearing takes place, preparation time will be needed for the hearing, as well as an additional attendance beforehand. All other matters should be able to be concluded by correspondence.

In some cases, it may also be necessary to interview witnesses and further attendances would be necessary for this. Sometimes witnesses may have been transferred to other establishments since the incident that they witnessed. As ever, the need to travel longer distances should be balanced against the possible use of video links or agents to take witness statements.

7d – Parole Board Hearings and the Lifer Panel

The most costly applications are those before the Parole Board and review hearings for prisoners serving a life sentence.

Parole board matters are initially dealt with by written representations and in some cases the client can apply to have an oral hearing. The clients prison dossier will need to be considered (see 7a) and preparation will be needed for this as well as for the hearing itself. The client will probably need to be visited around 5 times over the course of the case to take initial and then full instructions, go through the dossier with the client as well as attendances prior to and after the hearing.

Case preparation will tend toward 10-15 hours, with 6 hours for the dossier, 2 hours for any written applications, 2-7 hours preparation for the hearing and general preparation in advance of attendances on the client.

Pay close consideration to CBAM 2.8.21 and 8.2 in this area. Remember that cases should be assessed on the basis that one fee earner has conduct throughout. Take care to ensure that preparation is not being unnecessarily increased or work being duplicated due to the use of multiple fee earners or the case being passed to an advocate or Counsel to deal with the hearing.

New parole board rules in 2009 mean that there is no longer an automatic right to an Oral hearing for any IPP or Life prisoner.

These cases are now dealt with by written representations, which go before an Intensive Case Management Panel Member (ICM Member). If the ICM considers that the client should not be moved to open conditions or released, then the written representations are treated as a paper hearing. These cases only go before an oral hearing where the ICM member grants one.

As a result, these cases proceed as Advice and Assistance up until the point that an ICM Member grants an oral hearing; only after that decision has been made can Advocacy Assistance before the parole board be claimed.

7e – Recall

Whilst on parole, a client is subject to a licence with various conditions attached. A client maybe recalled to prison to serve out his sentence if the license is breached. This can be challenged by written representations. Where oral evidence may assist the parole board, an oral hearing may be held as well.

7f – Use of Counsel

Counsel may be instructed for all aspects of prison law work, but this instruction is on an unassigned basis. Where counsel is instructed to undertake the work of a solicitor, i.e. attending conferences or oral hearings, the contract requires that Counsel be paid at the same rates as solicitors as per UCC B4.4.17.

However, if Counsel is asked to provide advice as an expert on a point that does not relate to crime or prison law (i.e. Judicial Review) then this Advice should properly be treated as a disbursement and the guidance in part 3 will apply.

7g – Judicial Review

The Administrative Court of the High Court can hear a Judicial Review (JR) of the decision of a public body, such as a prison governor. It's civil proceedings, but where it arises from a criminal matter, a firm with a criminal contract can undertake it as Associated CLS work.

However, under CDS funding we can allow work for Counsel to advise on the merits of a judicial review application and for solicitors to consider Counsel's advice and inform the client. All work up to the lodging of an application for JR can be funded on a CDS5 extension, except the cost of Court fees.

Consider whether the use of Counsel is premature though. If written representations are being made, it is premature to instruct Counsel to advise on the merits of a JR. If the representations are successful, Counsel's advice will not be needed.

Parole Board Delay and Judicial Review

The parole board currently suffers from a severe backlog of cases awaiting an Oral Hearing. These delays mean prisoners are serving more time in prison than they should and can be a breach of the Human Rights Act. However, in the case of *Betteridge v Parole Board*, the High Court stated that there was no point in hearing a JR of the parole board in cases where an oral hearing is delayed, because it does not achieve a meaningful result. If an order granting a priority listing is made, another prisoner suffers even more, and if everyone applied for JR, then everyone would be back to square one. The High Court stated that on the basis that the Parole Board and MoJ had already put in place measures to address the backlog and reduce further delays, but these would take time to have effect, applications to JR solely on the basis of delay should not proceed except in very exceptional cases.

In such circumstances alone, it would not be a good use of public money to grant funds for Counsel's advice.

However, applications for JR may be made on multiple grounds, and where a request is made in cases for more than simple delay, this can still be granted.

Applications may still also be granted in exceptional cases, but in such cases, Solicitors should be able to identify in their application what the circumstances of the case are that make the case complex, exceptional or unusual. In determining whether an application is reasonable, it may be helpful to ask what remedy is being sought from the Court. If the only remedy sought is damages then this would fall outside the scope of CDS funding.

It must be noted that guidance in this area does not prevent clients seeking damages or some other remedy for breaches of their human rights by way of judicial review, however funding for such actions, including Counsel's advice on whether a case exists falls outside the scope of the Prison Law scheme and should be funded under the Associated CLS class of work.

8 – Ancillary Prison Matters

Occasionally, as a result of a conviction a person may be subject to civil sanctions in addition to their sentence. Some of these, such as Criminal Anti-Social Behaviour Orders (CRASBOs) and Sex Offender Prevention Orders (SOPOs) are prescribed proceedings, but others fall outside the scope of criminal funding altogether.

Within a prison environment, the two most common are matters dealing with Deportation and the Vetting and Barring Scheme.

8a – Deportation

A foreign national sentenced to imprisonment may be liable to be deported to his home nation or country of origin at some point during his sentence or on release. Although a client facing deportation will be in prison, matters relating to the deportation are not Prison law. Deportation falls under the Immigration category of Civil funding and firms need an Immigration contract to undertake this work.

8b – Vetting & Barring Scheme

The Safeguarding Vulnerable Groups Act 2006 created the Independent Safeguarding Authority, an organisation that maintains 2 lists, 1 of people barred from working with Children and a second of people barred from working with vulnerable adults. People convicted of relevant offences may find themselves included on these lists, which will result in the ISA preventing them from working with children or vulnerable adults. The new scheme replaces and combines several previous such registers in a single body.

People serving prison sentences may wish to challenge and appeal their inclusion on these lists. This is done firstly through representations to the ISA and ultimately by proceedings before the Care Standards Tribunal.

Inclusion on these lists is not a criminal sanction and work done to challenge them will be legal help rather than advice and assistance. Proceedings before the Tribunal will require full civil funding. Suppliers wishing to undertake this work would need a full Civil Contract, though some funding may also be available to Crime firms under an exceptional case contract from the Special Cases Unit.

9 – Appeals and Reviews

Funding to cover advice and assistance on appeal where a Representation Order is not in effect.

While prison law accounts for the majority of the costs under Advice and Assistance, Appeals cases often come in as the most expensive.

The work undertaken in this class of work should only encompass work necessary to identify and prepare Grounds of Appeal. Just as we would not fund the preparation of a Crown Court appeal on a Magistrates' Court order, this class of work is NOT to be used to prepare the actual appeal proceedings as this is funded by the Court of Appeal (Criminal Division) ("the Court").

The Court case manages criminal appeals in a similar manner to our VHCC team and so we should not be granting funding for work that should be authorised by the Court as this limits their ability to effectively control and manage the cases.

In all but very exceptional cases, identifying Grounds of Appeal does not take substantial work. The work undertaken is broadly similar to that allowed under a Crown Court Representation Order for advice on appeal, with the only additional work being the new solicitors meeting the client, taking instruction and considering the file.

9a- Appeal Process

To understand this class of work, it may assist to understand the appeals process.

The first stage in the appeal process is to obtain leave (or permission) to appeal. Leave is required in all cases except where:

- The Crown Court judge has certified the case as fit to appeal;
- Where the appeal is against a finding of contempt of court
- Where the case has been referred to the Court by the Criminal Cases Review Commission

In most cases an application for leave to appeal will be determined by a single Judge. Generally, only once the single Judge has granted leave does the case proceed to the full Court.

To commence appeal proceedings, solicitors must submit notice and grounds of appeal on Form NG together with any other supporting documentation. In an application for leave to appeal against conviction the grounds should set out why the conviction is unsafe. In relation to an appeal against sentence the grounds should set out why the sentence was manifestly excessive and/or wrong in principle. It will not be enough to say just that, and the reasons why the conviction is unsafe/the sentence manifestly excessive or wrong in principle must be set out.

LSC funding is available for new solicitors to examine a case and prepare and lodge Form NG.

Once Form NG has been submitted irrespective of who has submitted it, the Court is seised of the application, and all subsequent requests for funding go to the Court. If the Single Judge refuses leave to appeal and the application is renewed, applications for funding must be submitted to the Court, not to the LSC.

There are no circumstances once Form NG has been submitted that the Commission grants funding. Any cases involving renewed appeals must be referred to the Court.

If the Court reject an application because further work needs to be done before grounds of appeal should be submitted, then that further work is something that can be funded by the LSC. Where an application is made to the LSC following a rejection from the Court, the application should be accompanied by any notice or letter of rejection from the Court to allow the LSC to assess the reasons for the Courts refusal to grant funding. In cases where funding has been refused because grounds of appeal have been submitted prematurely and further work needs to be undertaken, then the LSC will consider these requests. In cases where the Court has refused funding for other reasons, including that the Court does not feel funding to be justified, then the LSC will need strong justification as to how the case continues to meet the sufficient benefits test to justify further funding from the LSC.

9b – Is It Reasonable To Act?

Funding in this area allows a new Solicitor to consider a case and advise on appeal, but it does not exist to provide second opinions for clients or for solicitors to look through a case just to see what they might find.

Solicitors should determine if the trial solicitors or Counsel gave advice on appeal. If this advice was negative, the solicitors should indicate what circumstances have changed to justify new advice or why the previous advice was flawed. We should not fund second opinions solely because the first opinion was negative (UCC B3.1.1).

Secondly, the client should be able to advise in the initial interview why they think they have a case. They may be complaining about the level or quality of representation, the fact that evidence was not introduced in his defence, decisions not to call witnesses, comments made by the Judge, or new evidence or witnesses that have since come to light, but the client must be able to indicate that something material has changed and why they now believe they have a case that could be appealed.

It is not enough to simply say that the client wants to appeal without being able to indicate why, because otherwise we face a situation where the solicitors must trawl through the case papers, second-guessing the trial lawyers, looking for any possible avenue of appeal. This is not a good use of public money and funding should not be authorised for these speculative applications.

9c – Considering the Papers

Since we expect the client to be able to indicate a reason as to why his conviction is unsafe or sentence is manifestly excessive or unlawful, that should give the solicitors a starting point when considering the papers.

It will almost never be necessary for solicitors to consider the entire file of papers to prepare grounds for an appeal. A large proportion of the papers in a case are routine, and it is not necessary to look through all the routine correspondence. The client's instructions should identify the areas of the case that the client is taking issue with and this narrows the scope of the work the solicitors must undertake.

Requests to consider documents should be limited to specific documents needed to further the client's instructions. Occasionally funding may be requested to review the file as a whole and nominal time to look through the file may be granted to a maximum of 10 hours, but not to consider every page.

This initial work may identify further areas that need to be considered, but we should always be certain that the solicitors are clearly identifying specific work to be undertaken and justifying why that work needs to be done.

Key documents may include, but not be limited to:

- File notes of the trial from Solicitors and Counsel
- Client's proof of evidence
- Statement of IP
- Case summary
- Pre sentence report
- Advice on Appeal from trial Counsel

9d – Experts and Transcripts

Our starting point here is that it will only rarely be the case that an expert report is needed to prepare grounds of appeal. We should therefore be very cautious about granting such reports.

When an expert report is required, Solicitors should provide detailed reasons that fully set out why the report is necessary and essential to the preparation of Grounds of Appeal. If detailed reasons are not provided, that aspect of the application should be refused and returned to the solicitor for further information to be provided.

In many cases, particularly where the cost of the report is high, it may be appropriate to ask the expert to provide an indication of whether his report is likely to assist the client. Funding can be authorised for a preliminary report or paper review by the expert to provide a brief written or oral opinion on the matter. If positive, funding for the remaining work can then be provided.

With regard to transcripts, the Court have recently advised us that Her Majesty's Court Service have agreements with all the court transcribers to provide transcripts of hearings at a discounted rate that is substantially less than the cost to solicitors obtaining them privately. It is quite clearly not a good use of public funds for us to fund court transcripts when they can fund this at a substantially reduced price. Where solicitors seek transcripts, every effort

should be made to consider whether the transcript is needed to enable provisional grounds to be drafted.

The only transcripts we should ever need to authorise in conviction cases are the Judge's summing up, rulings pertinent to specific grounds of appeal; in relation to sentence cases we should only need to authorise obtaining the Judge's sentencing remarks. In the Court's experience, transcripts of any other part of the trial are unlikely to be necessary. Requests are commonly made for transcripts of particular witness evidence, but the Judge in his summing up should address anything of relevance said by a witness.

We should only authorise transcripts necessary for the preparation of grounds of appeal, decisions on other transcripts should be left to the Court.

9e – Use of Counsel

Where Counsel is asked to advise on grounds of appeal, especially on technical points of trial procedure on which Counsel is the recognised expert, then an advice from Counsel may be appropriate. The guidance in part 3 will apply, but it should be noted that in Appeals cases, as the issues are likely to be more complex, it is more likely that the fixed fee will not be appropriate and that hourly rates and a full breakdown will be required.

10 – CCRC

The CCRC is the Criminal Cases Review Commission. It has the power to review a criminal conviction and refer the matter back to the Court of Appeal. Its role is to review and investigate suspected miscarriages of justice. The CCRC is normally a last resort and, with some exceptions, can only be approached if the client has lost an appeal or leave to appeal has been refused.

Unlike other areas of Advice and Assistance, the initial limit for CCRC matters is £500. The Unified Contract also goes into far more detail as to the work that can be undertaken and full reference should be made to the UCC when assessing a CCRC application.

Solicitors should take initial instruction to decide whether the case has any merits before the CCRC application is made (B3.1.4(3)). They must then consider if the case has "a real possibility" of succeeding (B3.1.4(5)). Once basic information has been obtained in terms of instructions, statement and case papers, case screening should commence. Initial case screening should take 2 hours, and all this work will probably be done under the initial limit, so any CDS5 applications will only be for cases which have passed this screening process. Solicitors will therefore be able to detail why the case meets CCRC referral criteria.

As per B3.1.4(8) these cases often involve novel or unusual areas of evidence, and it would not be unusual for solicitors to undertake further

investigative work or forensic testing in preparation for a CCRC applications. The CCRC may ask for investigative work to be carried out, and may also bear the cost of some experts reports. Before granting an expert's report, we should make sure that solicitors have checked that this is not something the CCRC will pay for.

As per B3.1.10, a full trial transcript is unlikely to be necessary, but costs may be authorised to seek a transcript of the judge's summing up. If the case has already been before the Court of Appeal, solicitors should first determine if such a transcript already exists with the Court's papers.

It would be unusual to instruct Counsel prior to making the application to the CCRC (B3.1.13) however, Counsel may be asked to provide advice on specialist areas of law or advocacy

11 – Rates and Limits

11a – Advice and Assistance

The initial limit for Advice and Assistance is £300, except for CCRC matters, which is £500.

	National	London
Preparation / Attendance	£46.90	£49.70
Travel / Waiting	£26.30	£26.30
Letters / Calls	£3.70	£3.85

11b – Advocacy Assistance

The initial limit for Advocacy Assistance is £1500

Rates for Advocacy Assistance vary depending on the area of work being undertaken and whether the client is an own client or duty solicitor. Please refer to the relevant sections of the UCC for up to date rates. Please note that in many areas, these rates have substantially changed from those published in the Supplement to Focus on CDS – Criminal Defence Service Remuneration Rates and that document is no longer a reliable guide on Advocacy Assistance funding rates.

Warrants of Further Detention – UCC B1.3.9

Armed Forces Custody - UCC B1.4.10

Vary Police Bail – UCC B1.5.10

Crown Court or LSC Granted Rep Order – UCC B2.4.13

Prison Law – UCC B4.3.17

11c – Boundary of Advice and Advocacy

Where a case starts off as advice and assistance and moves on to advocacy, the proper time to self-grant advocacy assistance is the point where a hearing is listed or when it becomes certain that the case is moving to a hearing.

Under current guidance, the advocacy assistance rate applies retrospectively to all costs in the case once the CDS3 has been signed.. The position will change in the UCC for 2010 contracts so that Advocacy Assistance only applies from the point the CDS3 is signed. Advocacy Assistance should not be self granted until it is apparent that Advocacy will be required in a case and caseworkers should guard against premature use of the higher rates.

On signing the CDS3, the £1500 limit for advocacy assistance takes effect, unless the Regional Office has already extended the advice and assistance limit beyond this, in which case that limit shall continue to have effect.

When billing a case that has moved from advice to advocacy, only 1 claim should be made, using the advocacy assistance codes (UCC A19). When calculating the claim, the work done under advice and assistance prior to self-granting advocacy assistance should still be calculated at the advocacy assistance rate.

GLOSSARY OF TERMS		
CLASS OF WORK	TERM	DEFINED TERM
General	UCC	Unified Criminal Contract
Prison Law	Abscond	Escape from an Open Prison
	ACR	Automatic Conditional Release system by which prisoners serving 1 year or more but less than 4 years for offences committed before 4 April 2005, are released
	Adjudication	Internal prison disciplinary hearing
	Automatic Life Sentence	Subject to exceptional circumstances, the Courts passed this sentence on anyone convicted of a 2 nd serious sexual or violent offence between October 1997 and April 2005. It was replaced by the IPP sentence but many prisoners in the system are still serving it.
	Categorisation	Assigning prisoners to the correct security category and allocating them to an appropriate prison to ensure they do not escape or threaten the control of establishments. It also ensures that prisoners are not held in conditions of security higher than necessary.
	Category A Status	Prisoners whose escape would be highly dangerous to society and therefore the aim must be to make escape impossible.
	Category B Status	Prisoners for whom the very highest conditions of security are not necessary, but escape must be made very difficult.
	Category C Status	Prisoners who cannot be trusted in open conditions, but who do not have the resources to make a determined escape attempt
	Category D Status	Prisoners who can be reasonably trusted in open conditions
	CRD	Conditional Release Date. The date on which a prisoner serving 12 months or more but less than 4 years is released on licence

		under supervision.
	Curfew	Typically prisoners are requested to remain in their homes between 7pm and 7am
	Custody For Life	The mandatory sentence if someone commits murder aged 18 or over and under 21 and a discretionary sentence for people of this age for several other offences
	DCR	Discretionary conditional release system by which prisoners serving 4 years or more may be released on parole
	Detention & Training Order	The Detention and Training Order (DTO) sentences a young person to custody. It can be given to 12- to 17-year-olds. The length of the sentence can be between four months and two years. The first half of the sentence is spent in custody while the second half is spent in the community under the supervision of the (YOT). The courts only give a DTO to young people who represent a high level of risk, have a significant offending history or are persistent offenders and where no other sentence will manage their risks effectively. The seriousness of the offence is always taken into account when a young person is sentenced to a DTO.
	Detention at Her Majesty's Pleasure	This is the mandatory sentence for a person convicted of murder aged over 120, but under 18.
	Determinate Sentences	A sentence for a specific period of time. Prisoners must be released at the end of this period, if they have not been previously released on licence or some other scheme. This includes prisoners given extended sentences for public protection (EPP)
	Discretionary Lifer	Several serious offences carry life sentence as their maximum penalty and use of this sentence is at the Judge's discretion.
	Dispersal	Method of dispersing Cat A prisoners around the prison system
	Dispersal Prison	Top security prison housing Cat A prisoners
	DPP	Detention for Public Protection. This is the equivalent to the IPP

		adult sentence for young offenders under 18 years
	EPP	Extended sentence for Public Protection
	ERCG	Early Release on Compassionate Grounds
	ESP	Extended Sentence Panel
	HDC	Home Detention Curfew - Certain short-term criminals are released from prison several weeks or months before completion of their sentence, usually to allow them to integrate back into society. Available for prisoners of non-violent or sex crimes.
	ICM	Intensive Case Management – A process used by the Parole Board to speed up the Parole process and ensure Parole hearings are effective and decisions made based on all relevant information. ICM panel members review cases at earlier stages and can ensure that parole dossiers are complete. They can also make paper decisions based on the dossier, removing the need for an Oral Hearing in some matters.
	IEPS	Incentives and Earned Privileges Scheme. A scheme introduced in 1995 to offer incentives for hard work, constructive activity and sentence progression. The gain and loss of incentives is not intended to operate as a secondary disciplinary scheme and legal advice should only rarely be needed in respect of a prisoners rating on the scheme, usually within the broader context of treatment
	Imprisonment for Life	The mandatory sentence given to an offender convicted of murder and aged over 21.
	Indeterminate Sentences	Under this sentence, no maximum sentence is passed. Instead, the Judge imposes a minimum term that must be served, called a Tariff. After that date, release is dependent upon the parole board being satisfied that the offender poses no further risk to the public. Indeterminate sentences are either a Life Sentence, a DPP or an

		IPP.
	IPP	Imprisonment For Public Protection. Given to an adult who is convicted of a serious specified violent or sexual offence for which the maximum sentence is 10 years or more and who, in the courts view, poses a significant risk of serious harm to the public.
	ISA	Independent Safeguarding Authority – Responsible for maintaining and reviewing the lists of people barred from working with Children and Vulnerable Adults.
	ISSP	Intensive Supervision and Surveillance Programme can be a condition of the community period of the Detention and Training Order.
	JR	Judicial Review
	LED	Licence Expiry Date
	Licence	Conditions adhered to by the prisoner for a specific length of time. May include curfew, not to leave jurisdiction. To live at a specific address etc.
	Life Licence	A prisoner who has served their tariff (minimum sentence) becomes eligible for parole. If parole board agrees to release a prisoner who was sentenced to life, they will be released on a life licence. If they break conditions of release they can be immediately re-incarcerated under licence terms.
	Mandatory Life Sentence	This is the mandatory sentence required by law for the offence of Murder. There are 3 types depending upon the age of the offender when the offence was committed – Detention at Her Majesty's Pleasure, Custody for Life and Imprisonment for Life. The starting tariff for this sentence is either a 15, 30 or whole life term.
	Mandatory lifer	Someone who is over 21 and is serving a mandatory life sentence
	MDT	Mandatory Drug Test
	NOMS	National Offender Management Service

	OASys	Offender Assessment System - Used by Her Majesty's Prison Service (HMPS) and National Probation Service to measure the risks and needs of Criminal offenders under their supervision i.e. assess how likely offender is to be re-convicted, harm others, need for further specialist assessments.
	OBPs	Offender Behaviour Programmes. These are rehabilitation programmes designed to identify the reason why prisoners offend and reduce and monitor these factors. As well as reducing risk, programmes support risk assessment and the risk management of offenders.
	Open Conditions	Lowest categorisation. Generally prisoners are kept in relaxed surroundings. They have their own room with TV, own keys, daily activities, choice of food etc...
	Oral Hearing	A hearing of a Parole Board Panel to decide on whether an offender can move to open conditions or be released.
	PAR	Parole Assessment Report
	Parole	Supervised release of Prisoner before the completion of his/her sentence. Still considered to be serving sentence and may be returned to prison if they violate parole conditions
	Parole Board	An independent body usually made up of judges, probation officers, psychiatrists and lay members that assess prisoners to decide whether they can be safely released into the community.
	Parole dossier	Briefing paper based on the prisoner. Key elements are -Outline of offences for which the indeterminate sentence was imposed, previous convictions, pre sentence medical reports, post sentence probation reports, summaries of progress and disciplinary problems, previous Board reviews, Evidence from programmes or interventions aimed at addressing risk, current reports including reports from prison staff, probation staff, psychological assessment

		and psychiatric assessment if applicable, prisoner's representations, recommendation from the Secretary of State.
	PED	Parole Eligibility Date
	PNC	Police national Computer
	Probation	Sentence, which may be imposed by a court in lieu of incarceration. Convicted of a crime but has served only part of their sentence in prison. May abide to a curfew and obey orders of the probation officer. I.e. cannot leave jurisdiction.
	Recall	To revoke or withdraw parole licence. Prisoner is sent back to prison.
	ROTL	Release on Temporary Licence. In certain circumstances a prisoner will be allowed to leave prison on a temporary licence. The purpose of this is either for compassionate reasons or to help the prisoner improve their chances of resettlement after their release.
	Secretary of State	Senior member of Government. Normally a Cabinet Minister appointed by the Prime Minister
	Sentence Planning	Sets out details of problems they need to work on, such as drug addiction or anger management. Their progress is reviewed each year and an action plan made for the coming year. Whether the prisoner complies with the sentence plan along with their behaviour in prison will play an important part in decisions about whether they can be released after the tariff is served.
	Tariff	Tariff is the minimum period set for life sentence. Prisoner must meet requirements of retribution and deterrence before being considered for release. After minimum period served, release will be considered when prisoner is judged no longer a risk of harm to society
	UAL	Unlawfully At Large

	VBS	Vetting & Barring Scheme. A system managed by the ISA in which people who wish to work with children and vulnerable adults are vetted against lists of people barred from working with those groups.
	VDT	Voluntary Drug Test
	Whole Life Tariff	Where the minimum tariff ordered by the Judge is the rest of the offenders natural life.
	Written Submissions	Prisoners representations to the parole board
	YOI	Young Offender Institution
	YOT	Youth Offending Team

Appeals & Reviews	CAO	Criminal Appeals Office – An admin department at the RCJ which case manages criminal appeals and deals with funding applications
	CCRC	Criminal Cases Review Commission – A body set up to investigate potential miscarriages of justice. Can examine a case and refer it back to the CoA.
	CoA	Court of Appeal
	Form NG	Application form to the CoA to begin an appeal – includes the Grounds of Appeal
	Grounds of Appeal	The formal reasons outlining why an appeal is being made.
	LCJ	Lord Chief Justice of England and Wales – Head of Criminal Justice, the most senior Judge in England and Wales and head of the Court of Appeal's Criminal Division
	Leave to Appeal	Appeals to the CoA have to have permission from the trial Judge, or be granted Leave by a CoA Judge
	LJ	Lord or Lady Justice of Appeals – Court of Appeal Judge. Plural is LJJ
	RCJ	Royal Courts of Justice (Home of the High Court and Court of Appeal in London)
	Seised	A legal expression meaning to take legal possession or custody of something. If a Court is seised of an application, it has control/ownership of the matter. From middle French
	Single Judge	A single CoA Judge who makes an initial decision on whether to grant leave to appeal or not. Acts as a filter to prevent cases with no merit reaching the full Court at great expense to all involved

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