

## **VHCC Best Value Tender**

### **Questions and Answers**

**13 July 2007**

**(The answer to Question 54 was updated on 25 July 2007)**

This document contains answers to all questions relating to the VHCC Best Value Tender received up to 12 noon on Friday 6<sup>th</sup> July 2007.

**Please note:** the LSC has amended the answers to Questions 33, 71, 81 and 101(4) as published previously. These are now shown in bold.

Applicants should read this document and the Information for Applicants before submitting their application.

## VHCC Best Value Tender – Questions and Answers

### **ANSWERS TO QUESTIONS RECEIVED UP TO 5PM ON TUESDAY 5 JUNE 2007.**

#### **Question 1**

*Could you give me an idea of what you mean by "...there will now be separate contracts for Panel Members and Panel Advocates...", please ???. Do you mean that the originally-envisaged system of counsel applying to be on individual solicitor firms' lists of advocates, and liaising with them as to whether to take on cases at one of three base price levels etc has been amended ???.*

*I realise that the info re : advocates will probably be available on the 15th, but as I thought everything was happening today I have already contacted all our firms and put deadlines in place to get them information by. If you are at liberty to tell me if and how the scheme as far as advocates are concerned has been amended, even in broad terms, it would help me tremendously.*

#### **Answer 1**

The separation of the contracts does not change the definition of applicant teams or the role of Advocates in the tender - please see in particular the sections on "Who we are looking to contract with" on page five of the Information For Applicants ("IFA") and Selection Criteria pages 34 to 37 of the IFA.

The Panel Advocates' Contract, which will be published on 15 June, will consist of those sections of the draft Contract issued on 20 April excluding the terms that relate only to litigators (Panel Members) and amended to take account of the changes described under "Response to consultation on VHCC contract" issued on 5 June. There will be other minor drafting changes, which we are making as a result of the consultation exercise.

#### **Question 2**

- a) *The essential criteria states that applicant firms must have done either two or more VHCC matters or equivalent cases or equivalent hours on such cases. Those firms would have to be peer reviewed at three or above. Would it be possible for two or more firms to combine their experience?. IE could two firms, one with Peer review three or above and another with equivalent VHCC qualification make a joint bid for panel membership.*
  
- b) *Could a firm with peer review qualification but not VHCC qualification make a joint bid with barristers chambers where the proposed team would together have the requisite VHCC experience.  
Could two firms and a barristers chambers put in a joint bid if the combination of all met the requisite criteria,.*

## Answer 2

- a) The essential criteria require relevant Defence Team Members to have experience of at least two Qualifying Cases, at least one of which must have been prepared to trial in the Qualifying Period; or 300 Qualifying Hours conducted in the Qualifying Period. These Qualifying Hours can be on one case.

Consortia bids are not permitted – please see page six of the IFA. In this example the firm with VHCC experience could apply alone and be peer reviewed in accordance with the Peer Review section on page seven of the IFA.

- b) The experience of Litigators and Advocates is assessed separately so it would not be possible to pool their experience. From the information provided, the applicant in this example would score no more than eight marks and would therefore not be assessed as acceptable on the essential criteria.

## Question 3

- a) *We are thinking of tendering 8 cases over the qualifying period. In the qualifying period I undertook work on a case whilst I was at another firm. Can this be taken into account in our bid?  
We have 3 other cases which I have signed contracts for whilst at my current firm: Two category 2 cases : One category 3 case*
- b) *We currently have about 6 VHCC cases in the investigation stage right on which I think charges may be brought before end September 2007.*
- c) *I would also be grateful if you could let me know whether you would consider as satisfying the criteria of case manager a litigator who spent several years at the SFO.*
- d) *We had a clear pre contract audit in February from the LSC but we have not had a peer review as we do not undertake general criminal work under our contract. Do you have alternative arrangements for firm's like ours?*

## Answer 3

- a) The definition of cases that will count towards deciding how much an applicant can bid is shown on pages 21 and 22 of the IFA. This shows that a case worked on at another firm will not count in determining the size of an applicant's bid unless it was transferred to the applicant organisation and meets the definition of a Qualifying Case. The hours worked on the case during the Qualifying Period may, however, be claimed as part of an applicant's hours-based experience (see page three of the Application Form, footnote three).

- b) Cases which have not so far been contracted cannot be included, as they fall outside the Qualifying Period (which expired on 4 June 2007).
- c) The definition of Case Manager is shown on page 37 of the IFA (see also the definitions of Litigator and Advocate). The experience required by a Case Manager is shown in the Selection Criteria EC3 (essential) and DC7 (desirable).
- d) Please refer to the IFA section on Peer Review, pages 7 and 8.

#### **Question 4**

- a) *Will there be an obligation to notify to the CCU all cases which are expected to last beyond 25 days, or only those which fall under the criteria to be published in the draft contract?*
- b) *Is it the case that there will be no further VHCC specific peer review for those firms which have already been peer reviewed on their General Crime work?*
- c) *Where a case is transferred from the applicant organisation, must the minimum 24 weeks of work prior to transfer have been conducted entirely within the qualifying period in order to be deemed a qualifying case? For example, where a case contract was signed prior to the qualifying period, but where less than 24 weeks of work was undertaken within the qualifying period, but more than 24 weeks of work was done on the case by the applicant organisation)*

*Where a case is transferred to the applicant organisation, must the minimum 24 weeks of work undertaken after the transfer have been conducted entirely within the qualifying period in order to be deemed a qualifying case?*

- d) *What happens if we are instructed in fewer cases than the number for which we bid in our application?*
- e) *Can the team confirm that an applicant organisation can accept instructions in a number of cases which exceeds the number included in their application? (Thinking particularly of a situation where the LSC extends the duration of the contract).*
- f) *Will the decision on which organisations should be in Panel A be based on tenders which are based on the assumption of an 18 month contract, or should applicant organisations take into account when tendering the fact that the LSC may, if it so chooses, extend the contract to a maximum of 30 months? It seems that tendering on the basis of an unknown contract length introduces many variables*

#### **Answer 4**

- a) It will be a requirement in the VHCC Panel Contract to notify the LSC of any case where the trial is likely to last 25 days or more.
- b) If a firm has met the Peer Review standard for this Panel no further Peer Review will be required for the first Panel. It may be necessary to be Peer Reviewed during the life of the first Panel as qualification for the second panel.
- c) To count a **case**, the 24 weeks of work must have been carried out during the Qualification Period. If only part of this work was carried out during the Qualifying Period, only those hours (carried out in the Qualifying Period) can be counted.
- d) Nothing happens. How many VHCCs a Panel Member conducts is down to client choice. The LSC cannot prescribe how many VHCCs a Panel Member takes on.
- e) Once a Panel Member is on the Panel, how many VHCCs it conducts is down to client choice and whether the Panel Member has the resources available to take the VHCC on.
- f) The selection of firms for Panel A will be based on the LSC forecast demand for 18 months. Applicants should tender on the basis of an 18-month Panel term. The option to extend the Contract for a maximum of a further 12 months is just that - an option.

#### **Question 5**

*Why does the application form not have a specific section for Solicitor Advocates?*

#### **Answer 5**

The IFA states that Solicitor Advocates should apply as either a Litigator or an Advocate (these terms are defined on pages 37 and 38).



**ANSWERS TO QUESTIONS RECEIVED UP TO 3PM ON WEDNESDAY 13 JUNE 2007.**

**Question 6**

- a) *Given the level of commitment required in bidding for these contracts, please would you disclose, in line with standard statistical practice, information regarding indicative hours that goes beyond the statement of mean averages and (in some cases) the highest and lowest hours, namely:*
- medians and ranges of quartiles or deciles;*
  - the same data after eliminating outliers;*
  - in the case of Normal distributions, the standard deviation. The above question may easily be answered from the data upon which you have based the statistical information that you have disclosed, which alone is not sufficiently meaningful to make the resource commitments required by the tendering process. This request relates to Tables 1-11.*
- b) *Please would you indicate what you have anticipated the impact to be of the change in criteria applicable to the categorization of cases in terms of volume and value of cases in each category.*
- c) *Annex A appears to be incorrect. The individual marks add up to 25, which is more than the total shown of 15. Is the total or are the individual marks incorrectly given?*
- d) *Please would you state in greater detail the basis upon which and the criteria and scale according to which you will be awarding marks under DC1 and DC2.*

**Answer 6**

- a) The LSC has provided in the IFA all the data it used when compiling its forecast. The LSC believes there is sufficient information for Applicants to undertake their own statistical treatment should they choose to do so. Tables 1-11 contain information that may be specific to firms or individuals. The LSC does not propose to release sensitive data of this nature particularly as Providers are in the process of compiling tenders. The release of such potentially sensitive information is not considered reasonable. The LSC is prepared to volunteer that the data produced is the result of simple statistical analysis of the relevant data to produce Means and Ranges.
- b) We do not consider this to be relevant to the tendering decision. We have disclosed the estimated impact of category changes in the Regulatory Impact Assessment.
- c) Annex A, and more particularly the desirable criteria, is correct. The maximum award achievable is 15 marks. However, we accept that it may be less clear than we had hoped. Applicants get marks for DC 1 or DC 2, not both. That is to say, if an applicant can demonstrate DC 1 then it would get

seven marks not 13 (i.e the applicant would not get the marks for both DC1 and DC2). Similarly in DC 3, an applicant can achieve only a maximum of three marks, not six as the questioner seems to assume. The total award an applicant can achieve is 15 marks (DC1 + DC3a + DC4 + DC5 + DC6 + DC7)

- d) Applicants will only be awarded seven marks if their bid demonstrates relative growth (i.e more than half the number of Qualifying Cases in the Qualifying Period) or will be awarded six marks if their capacity bid is equal to half the number of Qualifying Cases conducted in the Qualifying Period or will be awarded no marks if their capacity bid is less than half the number of Qualifying Cases conducted in the Qualifying Period. These are the only marks available to applicants under DC1 or DC2. Applicants cannot be awarded marks for both DC1 and DC2, nor will they be awarded partial marks for either criterion.

### **Question 7**

*Where in the application form does the firm record its qualifying cases?*

### **Answer 7**

There is no longer a requirement for firms to record their experience of Qualifying Cases. There is still however, a requirement for at least half of all Level A and Level B litigators in a Defence Team (at least one of which must be Level A) to demonstrate their experience. Please see pages 33 and 36 of the IFA.

On the Capacity-Price Bid Form, applicants should state the number of Qualifying Cases they are using as the basis for their capacity bid(s). Details of these cases are not required.

### **Question 8**

*I am an SFP Supervisor and joined my current firm to develop Specialist Fraud Work, and business crime. I included in my SFP application cases, which fit the SFP's qualifying case criteria, and included 2 cases where contracts had been signed, and at least one of the cases was signed in the qualifying period post June 2004.*

*My firm wants to tender a bid and I need to know whether I can use this case as a qualifying case even though it was a case I dealt with when I was in another firm.*

### **Answer 8**

There is no longer a requirement for firms to record their experience of Qualifying Cases. There is still however, a requirement for at least half of all Level A and Level B litigators in a Defence Team (at least one of which must be Level A) to demonstrate their experience. Please see pages 33 and 36 of the IFA. Applicants are asked to evidence the experience of individual Litigators and therefore the name of the firm on the VHCC contract is not applicable. Applicants should however ensure that the work conducted by a particular Litigator satisfies the definition of experience on pages 37 and 38 of the IFA.

### **Question 9**

- a) Could someone please confirm the status of the serious fraud panel.*
- b) If we are making an application to the VHCC panel do we need to make a separate application to the serious fraud panel.*

- c) *Please confirm the position of a VHCC contract that was signed in January 2004 but all the work in effect was in carried out between 21 May 2004 and 21 May 2007,can we include this as one of the VHCC worked on and therefore use the hours worked on this particular VHCC cases.*
- d) *Also please clarify if we can include a Serious Fraud VHCC that the Representation Order was in the name of another panel member firm but we carried out all the work in effect we were supervised by the panel member firm but they carried out no work apart from supervision.*

### **Answer 9**

- a) Please see page five of the IFA. The SFP continues to apply to VHCCs with Representation Orders dated before the Panel start date. The SFP will not apply to any VHCC with a Representation Order dated after 1/10/07.
- b) No. There will only be one Panel for VHCCs which will include fraud cases.
- c) Please see the definitions of Qualifying Cases and Qualifying Hours on page 39 of the IFA. A VHCC contract that was signed in January 2004 would not be eligible as a Qualifying Case and could therefore not be counted as such. The hours worked on that case in the Qualifying Period could however be used as experience of Qualifying Hours.
- d) There is no requirement for the litigator firm to demonstrate its experience of Qualifying Cases. Applicants are asked to evidence the experience of individual Litigators and Advocates and therefore the name of the firm on the Representation Order is not applicable. Applicants should however ensure that the work conducted by a particular Litigator and/or Advocate satisfies the definition of experience on pages 37 and 38 of the IFA.

### **Question 10**

- a) *With regard to Qualifying Hours - you have requested certain information together with billing guides with regard to the cases involved. If we are using qualifying hours from when our solicitors were at a previous Firm and that previous Firm is not forthcoming with the information required can the LSC request a copy of the bill from the National Taxing Team as they will not provide it to us without the consent of the previous Firm or is there any other way of dealing with this scenario.*
- b) *Can you advise with regard to "Qualifying Hours". Where it states that a matter cannot be used as "a Qualifying Case because a non-contracted case fails to meet (b) or (c) under that definition because the Representation Order was granted before the Qualifying Period, the hours worked .....". Does this mean that any hours on a matter where a Representation Order was granted prior to the 21 May 2004 but work carried out during the qualifying period can be claimed? Does the case have to have had a likely trial length of over 25 days or costs likely to exceed £150,000?*

### **Answer 10**

- a) **We consider this is a matter, in the first instance, for Applicants to act upon through the professional conduct rules of the Law Society. Where exceptional circumstances apply e.g. your previous firm is not forthcoming with the information before the tender closing date, Applicants may submit statements (including a statement of truth and the steps taken to obtain the information) from their nominated litigators confirming that they had worked on the cases they wish to use to demonstrate their experience. The LSC will be entitled to verify this information, as far as is practical, against its own records.**
- b) If the only reason for the case not satisfying the definition of a Qualifying Case under (b) or (c) on page 39 of the IFA is that the date of the Representation Order precedes the Qualifying Period, then the hours worked on that case in the Qualifying Period can be counted. The case would still need to either be one which has an actual trial length of 41 days or longer or had been notified to the CCU and the CCU acknowledged the case was a VHCC but decided not to contract.

### **Question 11**

*Page 34 of the IFA: Does this mean we need to enter three of four VHCC bids at each price (i.e. 12)? Or does it mean four overall, with each team deciding whether they would do it at the lowest price?*

### **Answer 11**

Page 34 of the IFA highlights:

- EC7 - Applicants must apply for a minimum of three VHCCs (i.e. applicants that apply for less than three VHCCs at any of the prices will not have their bid considered at that price). If an applicant does not wish to be considered at a particular price, they are asked to enter a bid of zero at that price.
- EC8 - Applicants may not bid for more than the greater of (a) four VHCCs or (b) the number of Qualifying Cases conducted by the applicant in the Qualifying Period at each of the prices for which the applicant submits a bid.

Applicants are asked to indicate the number of VHCCs that they wish to bid for at each of the three prices indicated in the Capacity-Price Bid Form. Therefore applicants should first of all ask themselves, am I prepared to work on VHCCs at this price? If the answer is yes, then the applicant should then ask themselves, how many VHCCs am I prepared to conduct at this price should this price be the final price accepted? If the answer is "none", then the applicant should enter a bid of zero (0) at this price. Applicant should do this for each price on the Capacity-Price Bid Form.

### **Question 12**

*Can you please clarify if our barristers have to apply to each of our instructing solicitors to work for them on VHCC cases? Or is it the case if you apply through one firm and are successful you are eligible to accept VHCC cases from all "Panel" firms.*

**Answer 12**

Please see the section headed 'Who we are looking to contract with' on page five of the IFA. Advocates may associate themselves with as many Litigator organisations as they wish. Applicants are asked to provide a list of Advocates they would instruct on VHCCs. Advocates can appear on as many lists as they wish and should an application be successful which includes the name of that Advocate on the list of Defence Team Members, that Advocate will then be added to the consolidated "VHCC Advocate List" from which all Panel Members will be able to instruct.

There is a risk for Advocates not including themselves on a sufficient number of applications as in a competitive bid round, not all applications will be successful.

**Question 13**

*Can a Barrister apply to be a member of more than one defence team? For example: a defence team in Leeds and a defence team in Birmingham?*

**Answer 13**

Please see Answer 12 set out above. Advocates are however asked to consider the restrictions on travel time and disbursement cost as set out on page seven of the IFA, under "Location"

**Question 14**

*Could you please define "other serious crime cases" as mentioned on page 38 of the Very High Cost Case (Crime) Panel Information for Applicants.*

**Answer 14**

A serious crime case is a case in which the main offence with which the defendant or defendants is or are charged, whether at common law or under any statutory enactment, is a triable either way or indictable only offence.

### **Question 15**

- a) *In the tendering exercise it says Panel Advocates need to apply, please can you confirm whether we complete the application form, or if there is a separate form for barristers?*
- b) *If we are to complete the same form, how many cases or hours are the barristers meant to have completed?*

### **Answer 15**

- a) Litigators and Advocates are asked to work together to complete the application form. Therefore, barristers and self-employed solicitor-advocates are required to complete the relevant sections of the application form and submit as part of an applicant organisation's completed form. Please see the IFA and Application Form for further information.
- b) Please see the Selection Criteria table on pages 33 to 36 of the IFA, in particular EC2, EC3, DC6 and DC7.

### **Question 16**

- a) *If a barrister has only done one contracted case during the qualifying period but has done over 300 hours on it do they qualify as a lead advocate under the essential criteria?*
- b) *If a barrister has only done one contracted case during the qualifying period but has done over 500 hours on it do they qualify as a lead advocate under the desirable criteria?*
- c) *Can you qualify with a combination of qualifying hours and hours worked on qualifying cases if they total over 300 or 500?*

### **Answer 16**

- a) Where an Advocate has only conducted one Qualifying Case in the Qualifying Period and therefore does not satisfy part (a) of EC2, the hours worked on that Qualifying Case can be counted for part (b) of EC2 as Qualifying Hours. Even if the work was done as a Led Junior Advocate it can be used to support an application as a Leading Advocate.
- b) The same applies for DC6.
- c) Provided the hours worked meet the definition of Qualifying Hours on page 39 of the IFA or they satisfy answer 16(a) above and the experience satisfies the definition on pages 37 and 38 of the IFA, part (b) of EC2 would be satisfied if the hours total 300 hours or more in the Qualifying Period and part (b) of DC6 would be satisfied if the hours total 500 hours or more in the Qualifying Period. It is possible to satisfy these requirements from a single Qualifying Case.

## Question 17

- a) *If an applicant firm has 3 Level A Litigators all of whom meet the Desirable criteria for experience and 3 Level B Litigators who do not meet the Essential or Desirable criteria for experience as they have never worked on VHCCs during the qualifying period and all 6 of them form the key members of the Defence Team (in addition to 6 Advocates who all meet the Desirable criteria for experience) with one of the Level A Litigators nominated as Case Manager, will the Firm firstly meet the Desirable Criteria and secondly, will the firm score maximum marks under this category?*
- b) *Can you confirm if the “Qualifying Cases, at least 2 of which must have been prepared to trial in the qualifying period” under criteria DC5, DC6 and DC7 for Experience qualification still applies as I read somewhere that the case no longer needs to have been prepared for trial during the qualifying period in order for it to count as a case for Experience purposes and that the work conducted during the qualifying period can count towards the Experience rather than the number of hours worked.*
- c) *If a Firm has 5 qualifying cases conducted in the qualifying period, what individual marks will it score under DC1, DC2 and DC4? And if a Firm has 4 qualifying cases conducted in the qualifying period, what individual marks will it score under DC1, DC2 and DC4?*
- d) *Where an Advocate is nominated as Leading Junior, is that advocate precluded from acting in a case as Junior Alone, and if not should both boxes on the application form be ticked when selecting “Advocate Role”? Where an Advocate is nominated as Leading Junior or Junior Alone, is that Advocate precluded from being a Led Junior in a case?*

## Answer 17

- a) Provided the Applicant is able to meet the hours/cases requirements, it would a) meet the Desirable Criteria DC5, DC6 and DC7; and b) it would also score maximum marks under DC5, DC6 and DC7.
- b) You must have “experience” as defined of a) Qualifying Cases in the Qualifying Period or b) Qualifying Hours in the Qualifying Period. See the definitions of Qualifying Cases and Qualifying Hours on page 39 of the IFA. It is the hours conducted during the Qualifying Period that count if you are citing hours rather than Qualifying Cases
- c) **This will depend upon the bid put forward by the Applicant. Where the Applicant has an odd number of Qualifying Cases e.g. five, it will be necessary to round up to the nearest whole number to calculate half i.e. three in this case. This would represent growth in terms of DC1 and would score 7 points. It will not be possible to bid for half cases If the same Applicant had 4 Qualifying Cases, a bid of 3 would also represent growth under DC1 and would score 7 points.**

**Applicants should also be mindful of the minimum and maximum bid sizes. The Applicant could not score under DC2 in either case as this would require a bid below the minimum bid size of 3 cases.**

- d) An Advocate nominated to act as a Leading Junior can also be nominated to act as a Led Junior or a Junior Alone. An Advocate nominated to only act as a Led Junior will not be able to be instructed as a Leading Junior or a Junior Alone for the purposes of any VHCC under this Panel. It is therefore important for applicants to ensure that all of the appropriate boxes are ticked under Advocate Role on page two of the Application Form.

### **Question 18**

- a) *Do the independent advocates need to complete an exclusion criteria form in terms of their own personal circumstances?*
- b) *Do all independent advocates need to separately complete question EC4?*
- c) *Why do all the key members including all the A & B level fee earners and all advocates need to sign the application form? Surely the signature of the head of the applicant organisation should suffice. It is a logistical nightmare to try and get 30 or 40 people to sign a form in July when many are on holiday.*
- d) *Why do you need the dates of the representation orders in the list of qualifying cases when practically every case was contracted and the CCU already hold this information?*
- e) *On the VHCC contract capacity bid form can the applicant bid at all three prices. If you only bid at the lowest price and the median or higher rates come into play will your bid at the lower rate still apply or do you formally need to bid at all three rates even if the number of cases you are bidding for is the same and your estimate of hours is the same?*
- f) *Could you please explain the basis upon which you are asking firms to provide very detailed information as to the ethnic monitoring and disability of clients who have been granted representation orders between 21<sup>st</sup> May, 2004 and 4<sup>th</sup> June, 2007. The LSC has only asked firms to keep this information over the last 12 months. How are we expected to provide such information up to that date? We have been granted a few thousand representation orders in this period. We simply do not have the information you request both as to ethnic background or as to disabilities for this three year period. Are we to extrapolate based on the period for which we have kept records? In any event why are these questions being asked in respect of representation orders for all clients rather than clients who have been subject to high cost cases?*

### **Answer 18**

- a) No, the Exclusion Criteria Form covers all the Key Members of the Defence Team, which includes Advocates. The Applicant organisation completes this form for the Key Members.
- b) No, but the applicant must answer this question in respect of all Defence Team members.
- c) Only an authorised signatory should sign for the Litigator organisation together with all self-employed Advocates. Separate signatures from all Level A and Level B Litigators, employed by the Litigator organisation, are not required. We apologise that page 2 presently requires you to list all Key Members, which includes Levels A and B. We should have stated that only self employed Advocates need to sign the declaration in addition to the authorised representative of the Applicant organisation.**

**We appreciate also the practical issue faced by Applicants if all Advocates are to sign the same application form. It will therefore be possible for individual Advocates to sign a separate copy of section 3 of the Application Form, which the Applicant must attach to their application**

- d) We accept that this will not be necessary for VHCCs. As it will be required for non VHCC cases we have included it in the application for consistency
- e) Applicants should ensure that they indicate a bid at all prices they wish to bid at. Please see Answer 11 set out above. If bids at the median price are considered this means that bids at the lowest price were not sufficient to meet the VHCC capacity need. If this happens, bids at the lowest price will become void. Similarly bids at the median price will become void if bids at the highest price are considered. Please see the Selection Process Flowchart at Annex B for further information on the assessment and selection process.
- f) The information is required only for VHCCs for which representation orders were granted between 21 May 2004 and 4 June 2007. This was not stated on the form for which we apologise. If an Applicant does not hold the information on some clients because it was not an LSC requirement at the time, an Applicant should provide the information for those clients for whom they do hold the information**

## **Question 19**

*If a case, at trial, was halted and a re-trial ordered, does this preclude us from using this case as part of our tender, or can we rely on this case on the basis of the combined length of both the aborted first trial and subsequent full second trial?*

### **Answer 19**

Where a trial is halted and a re-trial held, the trial length applicable for this tender is the length of the completed trial. Applicants cannot combine the length of the two trials when determining whether this case is eligible as a Qualifying Case.

## **Question 20**

*If I have received a peer review rating of PR4 even after appeal can I still be considered for the panel?*

## **Answer 20**

As stated in the section on Peer Review on page 7 of the IFA, applications will still be accepted from Applicant organisations who have received a rating of PR4 if they have not completed the final Peer Review stage, including a further review which will take place within six months of the first review. If you have exhausted the peer review appeal process and your final confirmed rating is below PR3. you will not meet the essential criteria.

## **Question 21**

*Can I confirm that it is indeed the case that Case Managers, under both the essential and desirable criteria, need have no more experience than any other litigator? What weight, if any, will be given to their having had prior experience of managing "qualifying cases" in the qualifying period?*

## **Answer 21**

The experience requirement for Case Managers is the same as that for other qualifying litigators. The "weight" given is set out in sections EC3 and DC7 of the Assessment Table which is Annex A to the Information for Applicants.

## **Question 22**

*I dealt with a case which had a representation order dated Sept 03 but which concluded in December 05. It was notified to the Criminal High Cost Cases Unit in Liverpool who replied in December 03 in the following terms.  
" Notification of VHCC Cases - Details of your case have been added to our database but the CHCCU will not be contracting for it. Please apply for payment from the National Taxing Team as usual"*

*The trial lasted approximately 25 days although the basis of the notification to the CHCCU was that the overall costs would exceed the prescribed limit (which they did).*

*Clearly this is not a qualifying case because the rep order does not fall within the qualifying period however can I use the hours I spent on the case during the qualifying period to enhance the experience element of my application?*

## **Answer 22**

Please see the definition of Qualifying Cases on page 39 of the IFA. This case would not fall within the definition of a Qualifying Case, neither would it fall within the definition of Qualifying Hours.

### **Question 23**

*In Annex A (the assessment table) DC5 and DC6 are unclear. If we elect to use DC5b as opposed to DC5a to show the necessary experience the paragraph will run as follows:*

*“ At least half of the Level A and Level B litigators in a Defence Team ( at least one of which must be Level A ) must have experience of:  
b) 500 Qualifying Hours have been conducted by each level A and Level B Litigator in the Qualifying Period”*

*Does this mean that at least half of the Level A and B Litigators must have done the 500 hours or does it mean that ALL must have completed the 500 hours?  
The same question applies in relation to DC6 for advocates.*

*This wording is a change from the simpler form used in the original proposal where it was clear that half the litigators or advocates had to have completed the 500 hours.*

*The same change in wording has been incorporated into EC1 and EC2 leaving them similarly opaque..  
Clarification please.*

### **Answer 23**

**The experience requirement applies to only half of the Level As and Level Bs combined, i.e. half of the Level A and Level B litigators (at least one of whom must be Level A) must have experience of [300] [500] Qualifying Hours in the Qualifying Period. So, if you have six As and Bs combined at least 3 (one a Level A) must each meet the required hours.**

**ANSWERS TO QUESTIONS RECEIVED UP TO 5:40PM ON MONDAY 18 JUNE 2007.**

**Question 24**

*I dealt with a case which had a representation order dated Sept 03 but which concluded in December 05. It was notified to the Criminal High Cost Cases Unit in Liverpool who replied in December 03 in the following terms.*

*" Notification of VHCC Cases - Details of your case have been added to our database but the CHCCU will not be contracting for it. Please apply for payment from the National Taxing Team as usual"*

*The trial lasted approximately 25 days although the basis of the notification to the CHCCU was that the overall costs would exceed the prescribed limit (which they did).*

*Clearly this is not a qualifying case because the rep order does not fall within the qualifying period however can I use the hours I spent on the case during the qualifying period to enhance the experience element of my application?*

**Answer 24**

Please see the answer to Question 10(b).

**Question 25**

*If a trial lasts 40 days and sentencing takes place at a later date and lasts a day does this constitute 41 days for the purposes of the VHCC.*

**Answer 25**

The length of a trial includes sentencing. Applicants wishing to rely on such cases should be able to evidence the length of the trial.

**Question 26**

*A large criminal firm intend to merge with another firm.*

*It is proposed that the effective date for the 'new firm' be 1st November 2007. One of the points raised, is the application to conduct VHCC cases. Between the two 'old firms' we have conducted two VHCC and, prima facie, would meet the essential criteria required.*

*The application by the 'new firm' would be significantly stronger than separate applications by the 'old firms'. We would therefore be grateful for your advice:*

- 1. Should we complete the application form upon the basis of the merger? (despite the fact that the 'new Firm will not exist until 1st November 2007)*  
*or*

2. *Should the application be completed by one of the 'old Firms', but containing the relevant levels of experience of the Level B and A fee earners of the second 'old Firm'?*

**Answer 26**

As stated at page 6 in the IFA, we are not prepared to accept joint bids from organisations proposing to hold a VHCC contract jointly.

Applications should be made based on the situation at the time of making the application. However applicants who are planning to merge before commencement of the new Contract [1 October 2007] may make a joint application for a single VHCC Contract (to be held between the LSC and the merged organisation) strictly on the basis that the merger will be complete by the commencement date. If the merger does not take place by this date, any VHCC Contract awarded will terminate automatically.

The merger of two firms after VHCC Panel Contracts have been awarded (i.e. Panel Members) must be notified to the CCU. Please see Rule 30 of the Conditions of Tender on page 32 of the IFA. If an organisation changes its status in any way from that named in the Contract (e.g. from a partnership to a limited liability partnership or a limited company), the Contract shall be deemed to have novated to the new organisation. You must inform us immediately of any such change in writing

**Question 27**

*Assuming at least 1 solicitor includes a Barrister on their panel bid [and are successful], does that render that Barrister on the "LSC approved list" and able to accept briefs from any panel solicitor? Or are those Advocates only able to work for panel firms whom listed the Advocate as a team member?*

**Answer 27**

Please see the answer to Question 12.

**Question 28**

- a) *If we had a level C fee earner work on cases do his hours count towards qualifying hours?*
- b) *If not do we accredit them to the case manager who supervised his work?*

**Answer 28**

Level C hours do not count towards Qualifying Hours, the requirement is that half the Level A and Level B Litigators (combined) one of whom is a Level A. The Litigators put forward by Applicants to satisfy EC1/EC 3 and DC5/DC7 must be able to demonstrate hours undertaken by themselves, not by others. In the example above the Level C hours would not be considered.

### **Question 29**

*Can you confirm that VHCC cases dealt with during the qualifying period by firms or criminal departments of firms acquired in total by this firm with the same litigators continuing to be employed can be counted towards the total number of qualifying cases used to quantify the size of the bid within this tender?*

### **Answer 29**

Please see pages 21 and 22 of the IFA on 'Size of Bids'.

### **Question 30**

*Would you be good enough to clarify the following in relation to our application to be admitted to above panel*

- 1. In relation to qualifying hours I take it we can include work conducted by fee earners at all levels viz A to C ?*
- 2. As I understand it we can also rely on qualifying hours conducted on a High Cost case signed before 21<sup>st</sup> May 2004 but worked on until 2005 ;but can you confirm that we cannot rely on the hours pre 21<sup>st</sup> May in such a case. In relation to this case much of the lengthy trial was undertaken post 21<sup>st</sup> May 2004 .Can we include the hours conducted by our Grade B fee earner whilst at Court on this very difficult and demanding case.?*

### **Answer 30**

1. Qualifying Hours for those Litigators (Level A and Level B) who are being included as part of the EC1/3 and DC 5/7 should be included. These hours should relate to those litigators' experience only. It is not necessary to include the experience of level C fee earners or those Level A and Level B fee earners who are not included in the applications as key members (i.e. part of EC1/3 or DC 5/7). Level C hours do not count towards Qualifying Hours and will not be considered.
2. Hours conducted before the Qualifying Period cannot be counted. All preparation conducted between 21 May 2004 and 4 June 2007 (inclusive) may be counted. Travel, waiting or attendance at court when sitting behind counsel may not be counted, only preparation may be counted.

### **Question 31**

*Under the criteria for qualifying cases it sets out under (b) that you can use a case where a representation order was granted during the qualifying period and trial length was 41 days. Could you use a case under this section where the trial was listed for greater than 41 days but the trial did not actually last that long because the client entered a plea?*

### **Answer 31**

In the circumstances described above the case should have been notified to the CCU. Having been notified, if the CCU confirmed in writing that the case met the requirements of a VHCC but that they would not be contracting the case, provided the Representation Order was granted during the Qualifying Period, this could be used as a Qualifying Case. The actual trial length under part (b) of the Qualifying Cases definition is not applicable. Applicants would be required to evidence the CCU's decision not to contract in this situation.

### **Question 32**

*I am a partner in a relatively new firm. My firm wishes to apply for inclusion on the VHCC panel. We have completed one qualifying VHCC case and are still in the investigation stage of what will be another. This case has been on going for over a year. We have passed our peer review at above threshold competent but cannot meet the essential criteria of two qualifying cases. Is there any appeal process whereby we could be considered for inclusion.*

### **Answer 32**

The LSC has published the essential criteria that firms must meet in order for an application to be considered. There is no appeal against an assessment of an application against the selection criteria. Applicants are asked to demonstrate the experience of their Defence Team Members either by the use of a minimum of two **Qualifying Cases** or by way of **Qualifying Hours**. The definition of these terms is contained in the definitions section of the IFA. Applicants may use the experience gained by litigators whilst they were at other providers. For further information please see the answer to Question 7 and please read the IFA.

### **Question 33**

*Is it possible for a solicitor (not advocate) to be a member of a defence team for a firm they are not employed by? Would a solicitor be able to be a member of a defence team for 2 separate firms on their respective applications?*

### **Answer 33**

- (i) Subject to the exception of self-employed Litigators (i.e. consultants), Litigators listed as Defence Team Members in an application must be employed by the applicant Litigator organisation. For information on self-employed Litigators please see Question 71.**
- (ii) Litigators may be listed on two separate applications provided they are employed by each applicant organisation or are self-employed litigators working as a consultant. Please see page six of the IFA.**

**Question 34**

*...concerning the way we include barristers on our application form. I have now heard that we merely need to list our preferred barristers without the need to provide evidence in support of counsel's previous experience of VHCCs as I understand this will now be provided to the LSC direct by chambers. Is this correct?*

**Answer 34**

This is not correct. Advocates will need to demonstrate their experience (if required). However, this must be submitted with the application form. Application forms must contain all the relevant experience put forward by both Litigators and Advocates.

**Question 35**

*We are a new Firm who therefore have not had any VHCC qualifying cases within the qualifying period.*

*However we do have staff who meet the experience criteria from their previous firm using qualifying hours.*

*Can we therefore apply for the minimum bid of VHCC cases in these circumstances.*

**Answer 35**

Please see the answer to Question 32.

**Question 36**

*Please could you respond to the following 2 questions:*

- 1. do grade C fee earners have to be identified in the application form?*
- 2. do cases funded by the army criminal legal aid authority count as a qualifying case?*

**Answer 36**

1. Applicants are not required to identify Level C fee earners;
2. Cases funded by the Army Criminal Legal Aid Authority do not count as Qualifying Cases.

**Question 37**

*Please confirm the position of a VHCC contract that was signed in January 2004 but all the work in effect was in carried out between 21 May 2004 and 21 May 2007, can we include this as one of the VHCC worked on and therefore use the hours worked on this particular VHCC cases.*

*Also please clarify if we can include a Serious Fraud VHCC that the Representation Order was in the name of another panel member firm but we carried out all the work in effect we were supervised by the panel member firm but they carried out no work apart from supervision.*

### **Answer 37**

Please see the answer to Question 9 (c) and (d).

### **Question 38**

- a) *What is the definition of experience? If we have a level A/B litigator who has experience of 3 qualifying cases two of which were prepared for trial but their role on each was minimal i.e. less than 10 hours do they meet the desirable criteria? Does it also mean that if another had less than 300 hours experience, say 275, of two pre 21/05/04 VHCCs that despite their obviously greater experience they would not meet the essential criteria?*
- b) *Where in the application do we tell you what our qualifying cases are in order to justify our bid size? The Capacity Price Bid Form asks for the number but nowhere asks for the detail of the case in order to verify this.*
- c) *Finally may we have a helpline rather than having to wait up to 11 days for a reply to queries?*

### **Answer 38**

- a) The definition of Experience, Qualifying Hours, Qualifying Period and Qualifying Cases are contained in the definition section at the end of the IFA.
- b) Applicants are not required to provide evidence of the Qualifying Cases they are using to calculate the size of bid. Applicants are only asked to state the number of Qualifying Cases.
- c) We regret we cannot answer individual queries. We will respond to all e-mails and publish information responses on the website every Friday. This is to ensure all applicants have access to the same information. We apologise for any inconvenience.

### **Question 39**

*Further to the application process; in relation to the 'advocates' section, if 'cases' rather than 'hours' are being used to qualify for experience, are any logs etc needed or is it sufficient to fill out the case detail? Obviously for 'hours' the logs must be attached but it seems rather self defeating if this must be done in any event if one is using 'cases'*

### **Answer 39**

The application should include sufficient detail and evidence to support the claims being made. This may include, but is not limited to 'Logs'. The Application must stand alone and be sufficient to demonstrate that the experience meets the definition of experience as detailed on page 37 of the IFA.

### **Question 40**

*Where would I find the proposed base prices for Cat 1 to 4 cases?*

### **Answer 40**

The headline rates for a Level A Litigator / QC are published on the Capacity-Price bid form available on the VHCC tender page of the LSC website. The proportionality and the effective payment rates of these levels of payment, can be found on pages 35 to 37 of the Final Response to Consultation on the VHCC consultation page of the LSC website.

### **Question 41**

*In order to meet desirable criteria 5b are you expecting us to list every single case that makes up the 500 hundred hours*

### **Answer 41**

Applicants must be able to provide evidence of the work that they are claiming as experience in their application. This evidence should demonstrate that the work conducted meets the definition of "experience" as defined in the IFA on page 37. Where this experience is made up of a number of cases then all cases must be listed with the required evidence detailed on the Application Form.

### **Question 42**

*A number of my chambers have done, are doing, or would like to do VHCC cases in the near future.*

*Presumably to get on a panel for the next 18 months counsel have to set out what work they have already done on VHCC's and such details has to be registered with individual firms of Solicitors, not centrally your office?*

*Is it right that the closing date for registering our interest is the 25th of June?*

*Is there any specific guidance available to the bar?*

## **Answer 42**

Advocates must complete the experience section of the application form and submit this as part of any application made by an applicant organisation (which may be led by a firm of Litigators as stated). However it should be noted that only half of Advocates listed on any application as acting in a leading role are required to demonstrate their experience either as cases or hours.

The closing date for applications is 27 July 2007.

All the necessary information regarding the VHCC tender can be found on the VHCC tender page of the LSC website.

## **Question 43**

- 1. May we include cases funded by the Army Legal Aid Authority in our qualifying cases/hours where these meet all the other relevant criteria?*
- 2. A Level A litigator is described as someone with 8 years' PQE. One of the proposed litigators in our team will not have 8 years' PQE at the date on which we submit our tender but they will have by the proposed contract start date of 1 October 2007. May we describe this person as a Level A and if so do we need to provide any additional explanation?*
- 3. The instructions in regard to the application process state that we must forward to you a CD-rom containing our application form and all supporting documents in Microsoft Word format. However, one of the items you require in support of our application is our time logs. These are generated by our time recording system which is not compatible with Microsoft Word. Are you willing to accept these documents as PDF files rather than in Microsoft Word format?*

## **Answer 43**

1. We refer you to the answer given to Question 36(2)
2. Applications should be made based on the situation at the time of making the application. The LSC cannot accept applications based on potential changes to any firm or individual Litigator. As with the current scheme fee earners may change Levels in the life of the Panel should their experience justify such a change.
3. We would accept evidence in support of an application in .pdf format. All other documents submitted as part of the Application Form must be submitted in Microsoft Word format.

## **Question 44**

*For the advocates section of the form, if the advocate has qualifying cases do you need to have any more details of the work they in fact did / hours worked etc or simply do you need the case details?*

#### **Answer 44**

The Applicant must ensure that their application includes sufficient evidence, which adequately demonstrates that the experience that is being claimed satisfies the definition of experience in the IFA. This may be (but not exclusively) demonstrated by the work type and by the hours undertaken. This applies to Litigators and Advocates.

#### **Question 45**

- (i) We have good links with barristers' chambers and have been approached to work with them. Is it possible to make our own bid and also be included in the Defence Team of a bid by a barrister's chambers. Is there any restriction on the number of other chambers bids in which my firm could be included in as Defence Team solicitors, bearing in mind that we have established relationships, and would apply for Representation Orders on those referrals?*
- (ii) One member of our Defence Team a Level A member wishes to include:
  - (a) A non-contracted VHCC case, where the Representation Order was granted a long time before the qualifying period but the case was listed for trial for 12 weeks i.e. over 41 days, but dismissed and work was carried out during the qualifying period Can this be included in the Qualifying Hours criteria?*
  - (b) A VHCC case contracted before the qualifying period but work carried out within the qualifying period. Can this be included.**

#### **Answer 45**

1. Please see page 28 of the IFA.
2. a) Please see the answer to Question 10(b).
  - b) Please note the definition of Qualifying Hours in the IFA.

#### **Question 46**

*In calculating Qualifying Hours, can we include everything, except travelling and waiting, e.g. including routine letters and phone calls?*

## Answer 46

Please see the definition of Experience on page 37 of the IFA. Routine Letters and Telephone calls may not be counted as Qualifying Hours.

## Question 47

*I have several questions as a result of completing the 'Application Form' on behalf of Advocates.*

*They are:*

- 1) Can reconciliation sheets be used to evidence qualifying hours?*
- 2) Is page 12 of the application form, a continuation sheet? If not what is the difference between page 10 and 12?*
- 3) When using qualifying hours for evidence, on a non qualifying case eg. Case signed prior to 21/5/2004, but using hours conducted in relevant period eg. post 21/5/2004, should we state Non Qualifying Case on page 10, or just enter N/A in Qualifying Case no. [ ] box*

## Answer 47

1. Reconciliation Sheets may be used if it is clear that the work relates to one person and further evidence is provided to demonstrate that the work meets the definition of experience detailed in the IFA.
2. Page 12 is in effect a continuation sheet.
3. It must be clear on the Application Form that the hours claimed are being used as part of Qualifying Hours. The case details must be entered and should clearly demonstrate that the hours claimed are Qualifying Hours. In this case you may indicate a case number in the box.

## Question 48

- a) *On the "List of the Key Members of your Defence Team" within that document I see there are four possible boxes to tick for "Advocate Role", QC, Leading Junior, Led Junior and Junior Alone. On any particular case a barrister of certain seniority could be either a leading junior, a led junior or junior alone – **could you confirm whether it acceptable for the applicant to tick all three boxes for a barrister in that position ??***
- b) *Similarly, in the "Experience – Advocate" Section of the Application Form, is it acceptable to tick both "Leading Junior" and "Junior Alone" if that barrister routinely both leads and does cases on his/her own ??.*

### **Answer 48**

- a) Please see the answer to Question 17(d). It is acceptable for an applicant to tick all three boxes for an Advocate. However, please note that for any Advocate where they are nominated to act in a leading role (i.e. QC, leading junior or junior alone), they may be required to provide the necessary evidence as experience under EC 2 and DC 6.
- b) Yes, it is acceptable.

### **Question 49**

*We use a number of different chambers. In our application do we need to put the names of all the Barristers that we may want to use for the VHCC.*

### **Answer 49**

Applicants are asked to list all those Advocates they would consider instructing on VHCCs. However, please be aware that all self-employed Advocates will be required to sign the application form accepting the details contained therein, including the prices at which the applicant submits a bid.

### **Question 50**

*In relation to "evidence supplied" by barristers who wish to be included on solicitors applications I intend to submit CCU reconciliation sheets or work logs in the case of VHCC cases.*

*What evidence is acceptable when referencing Ex Post Facto cases. Would a letter from Chambers detailing the case details, the hours worked (obviously within the qualifying period) and the National Taxing Team reference number be sufficient?*

*On the same point when referencing Grad Fee cases over 40 days would a letter detailing the length of trial and the court details be sufficient?*

*I would appreciate a swift response on these points as I am hoping to forward finalised barrister details/information to solicitors as soon as possible.*

### **Answer 50**

Where a case is being used to demonstrate Qualifying Hours the application must contain all the information requested. In support, applicants are asked to provide evidence to substantiate the information in the application form (e.g. a copy of the bill or something that demonstrates the hours being claimed are indeed Qualifying Hours.)

Evidence to substantiate trials over 40 days may include a court log or something that carries similar information and is similarly independently verifiable.

### **Question 51**

*Re the tendering process. Is there any point in Counsel listing prosecution VHCC cases as well as defence VHCC cases they have undertaken during the relevant period?*

### **Answer 51**

VHCCs where counsel was prosecuting are not Qualifying Cases and the hours worked on these cases cannot be used as Qualifying Hours.

### **Question 52**

- a) *If we meet the DC and bid at the lowest level and none of the higher levels, if the chosen level is above the lowest level, are we excluded completely from the panel?*
- b) *If we are bidding for 9 cases, can we bid for 9 cases at each level or can we to apportion the 9 cases between the levels?*

### **Answer 52**

- a) *If an Applicant only bids at the lowest price (i.e. does not bid at either the median price or the high price), this will be assumed to be a zero bid at the higher levels. If the Panel is formed at the median or high price that Applicant will not be considered at that price.*
- b) *Applicants should bid for as many VHCCs as they wish to undertake at each price. Please note, the minimum and maximum bids when considering the volume you wish to bid for. Please see page 21 of the IFA.*

### **Question 53**

*We represented a client in a case that was not contracted but notified to the CCU in July 2006. We did not include a trial estimate upon the basis that it was unclear at that stage.*

*At the end of August 2006 we received a letter from the CCU saying that "as this case has a trial estimate of 8 weeks, we do not consider it to be a VHCC, and have decided not to contract with your firm".*

*The case was eventually split into two main trials with the same main witnesses for the crown due to give evidence in both trials and the trials being split because of logistical reasons rather than any clear factual distinctions.*

*The first trial (with 4 defendants) ran for over 55 days and the second trial (with 7 defendants) was very likely to have run for more than 41 days, the crown however offered no evidence the day before the fixed date for trial. It was considered too late to notify the CCU to request that it be contracted as they would have inevitably said that it was too close to the trial date to do so, when the consideration to do so arose.*

- a. *Can we rely upon this as a qualifying case, upon the basis of the actual trial length in the first trial.*
- b. *Can we rely upon this case as a qualifying case upon the basis of a letter from the CCU now confirming that if they were told about it they would have not contracted it but would have considered it a VHCC.*
- c. *with regard to the " qualifying cases " , I signed a contract for a case on 12.5.04, just 10 days before the relevant date. Would I be able to rely on this case.?*
- d. *I represented 3 defendants in a large-scale fraud. All the defendants had their own leading and junior counsel and their own contracts with the LSC. Could I rely on these as 3 separate cases, (one of which even had a different T number) or would they only count as one case for the purpose of " qualifying cases."*

### **Answer 53**

- a. In the situation outlined above, the case would only meet part (b) of the definition of a Qualifying Case (see page 39 of the IFA) if the applicant's client was a defendant in the first trial (which exceeded forty days at trial) and that client's Representation Order was granted in the Qualifying Period. Otherwise, this would not be a Qualifying Case under this limb.
- b. No. A retrospective assessment of a case by the CCU would not be sufficient to meet part (c) of the definition of a Qualifying Case. Part (c) is strictly for those cases which were notified to the CCU and where the CCU acknowledged the case was a VHCC but decided not to contract. The situation described above does not satisfy this limb.
- c. You would not be able to use this as a qualifying case to determine the size of your bid or for experience purposes as it was not signed during the qualifying period. However the hours worked in the qualifying period can be used for VHCC experience purposes under EC 1 and 3 and DC5 and 7.
- d. Answer - A Qualifying Case on page 39 of the IFA is defined as a VHCC where the Individual Case Contract was signed by the applicant during the qualifying period. Therefore if you signed three separate contracts they will each count as a Qualifying Case.

## **Question 54**

*I have a query that I hope you can help me with in regard to the VHCC Panel Application Form for Experienced Advocates.*

*The requested information on this form is specific and detailed, and not information usually distributed beyond the necessary people. Therefore, my query is by disclosing this information to various solicitors' firms will we be breaching the Data Protection Act?*

## **Answer 54**

In the Application Form half of those Advocates nominated to act in a leading role are asked to provide specific information relating to their Qualifying Case experience. There are two areas that have been highlighted that may be seen to be sensitive information:

- (i) VHCC Contract Number which contains the legal aid account number of the instructing solicitor for that VHCC and the sequential number for that VHCC in relation to the number of VHCCs that firm has previously conducted; and
- (ii) evidence in support of experience when claiming Qualifying Hours.

When Advocates are providing this information to the applicant firm, they may wish to seek informed consent from the instructing solicitor for that VHCC before passing that information to the applicant firm.

If having done so, the instructing solicitor refuses to give consent, the Advocate should state 'Consent refused by instructing solicitor'.

When providing evidence in support of experience, Advocates should not divulge any information that is confidential to the applicant firm if that firm is not the same organisation as the instructing solicitor organisation.

We accept that the data that Counsel provide to an applicant firm is personal data. As applicants will be aware, personal data must be processed in accordance with the eight data protection principles under the Data Protection Act 1998. The first principle requires personal data to be processed fairly and lawfully and as such, one of the conditions in Schedule 2 must be met. Although consent is one of the conditions, any one of the other conditions could apply, in order for the processing to be fair and lawful. We consider that in this instance, applicants might like to look at the conditions in paragraph 5(d) and/or paragraph 6(1) of Schedule 2 to satisfy them that one or other applies and therefore meets the requirements of the first principle. In terms of meeting the fifth principle (shall not be kept for longer than is necessary), applicants could, of course, give Counsel an undertaking to safely destroy the data once it is no longer needed for the tender process.

**ANSWERS TO QUESTIONS RECEIVED UP TO 5PM ON TUESDAY 26 JUNE 2007.**

**Question 55**

*I have a barrister who signed a Barrister Acceptance Form on the 4<sup>th</sup> June, the closing date of the Qualifying Period however the case was accepted by the VHCCU as a contract on the 11<sup>th</sup> May 2007.*

*Is this a qualifying case?*

**Answer 55**

Providing the applicant organisation signed the VHCC Individual Case Contract before the end of the Qualifying Period, the VHCC can count as a Qualifying Case. However, attention must be paid, when completing the application form, to the definition of experience contained within the IFA.

**Question 56**

*The application form is asking for billing guides/logs of work for all key fee earners in Category A and B as well as all advocates whose experience is being relied upon.*

*Why is this needed for VHCC cases when you already have details of the numbers of hours worked by fee earners and Counsel because you have paid them.*

**Answer 56**

The LSC requires evidence to support applications. This may be in the form of work logs/billing guides but is not limited to this. If applicants feel they can evidence the information in their application form by another method, this would be acceptable.

The LSC considers that it is the place of applicants to provide the information in support of their applications; this will ensure that the process is fair to all. This notwithstanding, the LSC does not keep records covering the hours worked by or payments made to individual Litigators.

### Question 57

*EC2 - experience in preparing a qualifying case in the qualifying period. Does this mean that cases where contracts were signed prior to 21 May 2004 but the trial actually takes place after 21 May 2007 qualify or do all qualifying cases have to be signed after 21 May 2007.*

*Similarly do all 300 hours have to be after 21 May 2007 if contracts signed before this date qualify.*

*Finally I believe that the date of contracts signed is by the solicitors and not when counsel sign their acceptance form.*

### Answer 57

The definitions of Qualifying Hours, Qualifying Cases and the Qualifying Period are set out in the definitions section at the end of the IFA. Please note the Qualifying Period is 21 May 2004 to 4 June 2007.

The date that the contract is signed is the date that the VHCC Individual Case Contract is signed by the applicant organisation.

### Question 58

*I would be grateful if you could clarify if prosecution cases and privately funded defence cases (which meet the relevant criteria and were conducted in the qualifying period) qualify. Examples of such cases are:*

- 1. A senior silk and a junior within chambers, who prosecuted a trial on behalf of the Serious Fraud Office, amassed some 900 hours **each** in preparation in the qualifying period.*
- 2. A member of chambers defended in a trial, which ran for some 47 days which was **privately funded**. Counsel had amassed some 450 hours in preparation.*

*Obviously in both examples if these cases were eligible they would meet the "desirable" criteria.*

### Answer 58

Neither Prosecution work nor privately funded cases meet the criteria of a Qualifying Case. See the definition of Qualifying Cases on page 39 of the IFA.

### **Question 59**

- a) *Please would you explain what additional, hitherto unstated, criteria (if any; and if none, please clarify) you will be applying in Stage 5 of the Selection Process (set out at page 26 of the Information for Applicants) under “short-listing of applications”: what precisely is meant by “select[ing] those applications that best meet the desirable criteria, on the basis of the information submitted in the application” if the applicant has already scored “Very Good” or “Excellent” according to those selfsame criteria?*
- b) *Are you planning to apply any criteria not previously applied in your “final evaluation of the short-listed applications against all the criteria”, and if so, what are those criteria?*

### **Answer 59**

There are no unstated (sic) criteria. Stage 5 is the process where applications will be assessed against the desirable criteria. Applicants will then be assessed against the desirable criteria at each price point as detailed in the flowchart (see Stage 6 on page 26 and Annex B of the IFA), until the capacity of the applicants meet the forecast published in the IFA. The LSC is not planning to apply any criteria that has not already been published.

### **Question 60**

*The application form requires (half of) those nominated as leading advocates to substantiate their “experience” in relation to their “Qualifying Cases” or “Qualifying Hours”.*

*If they have acted in these Qualifying Cases or Qualifying Hours in any capacity other than as a Led Junior, does it not automatically follow that they would have had “overall supervision of the case”, or (even if as a QC, Leading Junior, or Junior Alone he or she had not had overall supervision of the case) if the case had been prepared to trial or completed, is it not inconceivable that they would not have had sole control of some of elements (i)-(vi) under limb (b) of the definition of “Experience” set out at page 38 of the Information for Applicants?*

*Please would you clarify whether it is sufficient, or even necessary, to satisfy limbs (a) and/or (b) in order to demonstrate “substantial involvement”. What other forms of substantial involvement would you accept or require as constituting “experience”?*

### **Answer 60**

The definition of experience referred to above includes the statement “This would involve (but is not limited to) for example:...”. The LSC has not attempted to define all “substantial involvement” as it would be too restrictive on applicants. It is intended that applicants should consider the definition and the scope when putting together applications and evidence should be provided as to the substantial involvement they consider appropriate to support the examples given. Where the case has been completed or prepared to trial the applicant may wish to put forward such work as part of their experience.

This would apply equally to Litigator experience in similar circumstances.

### **Question 61**

*Can we use cases in which we were instructed by the prosecution if the case qualify.*

### **Answer 61**

Please see Answer 51 above.

### **Question 62**

*I am in the process of putting together info for barristers to get onto the VHCC panel. One of the question in the application form is:*

*"If this case is/was a VHCC, please state the date the contract was signed"  
Does this refer to the date the solicitors signed the contract, the date of the barristers acceptance form or the date that Counsel started work on the case ?*

### **Answer 62**

The date of a Qualifying Case is defined on page 39 of the IFA as the date when the Individual Case Contract was signed (by the applicant organisation).

### **Question 63**

- 1. Can you please confirm that graduated fee cases that lasted more than 41 days qualify for inclusion in a barristers bid and if they do how the hours should be calculated*
- 2. Are junior counsel who do not reach the qualifying hours allowed to undertake junior work and if so how does this work ?*
- 3. Will you accept a barristers signature on the end of their part of the form as agreement to the specific solicitors bid ?*
- 4. How does a barrister become part of the advocates panel if s/he doesn't currently have the hours needed but subsequently acquires them during the life of the contract ?*

### **Answer 63**

1. Please see the definition of a Qualifying Case on page 39 of the IFA. Advocacy time should be calculated as described on page 23 of the IFA. Preparation time should be based on the records used by the Advocate to support their application.
2. Junior counsel listed nominated to act as led junior only are not required to have any previous Qualifying Case or Qualifying Hours experience. Those nominated to act as Junior Alone that do not have the necessary experience can be part of a list of Advocates provided there is another Advocate on that list with the necessary experience (i.e. the list of Advocates needs to be balanced between those leaders with experience and those leaders without experience).

3. Please see Answer 18c above.
4. As shown under EC2 on page 33 of the IFA and DC6 on page 34 of the IFA, only half of those nominated to act in a leading role must meet the relevant experience level. It is possible therefore for Advocates to act in a leading role without the necessary VHCC experience as long as the list of Advocates in the application has at least half of the leaders meeting the required experience. Also, non-leaders (led juniors) can be named as Key Members on the application form but do not need to fulfil the experience criteria.

#### **Question 64**

*May sound stupid but if half the lead advocates must meet the qualifying criteria what is the other half made up of?? .*

#### **Answer 64**

The other half of those listed to act in a leading role can consist of leading Advocates who do not meet the required VHCC experience criteria but who the applicant organisation wishes to nominate to be included on the VHCC Advocates List (as a Panel Advocate). This might include, for example, Advocates whose experience has been gained acting on behalf of the Prosecution.

#### **Question 65**

*If the Assessment Panel decide that a person put forward as a Litigator with qualifying experience does not satisfy the requirements, would the applicant fail to meet this criterion if the balance of qualified/unqualified team membership is affected?*

*In these circumstances would the LSC revert back to the applicant to seek clarification or to give the applicant opportunity to amend their application?*

#### **Answer 65**

If the consequence of the above is that the applicant is no longer able to meet the Litigator experience requirement (EC1 and/or DC5) the application would not score any marks for this criterion.

Please see rule 5 of the Conditions of Tender on page 30 of the IFA.

#### **Question 66**

*Information for filling in the advocates form. It is acceptable to list the hours and days claimed, assessed and paid in each stage of a contract rather than attach worksheets ?*

## **Answer 66**

This would not count as "evidence". Advocates are required to provide either the records they have used or will use to support a claim for payment, or confirmation from the LSC (in the form of VHCC Reconciliation Sheets) of the work that they have been paid for.

## **Question 67**

*If counsel prosecuted a case that fulfils the criteria as a qualifying case or qualifying hours can he use that experience to satisfy EC2, DC6 or DC7*

## **Answer 67**

Please see answer 51.

## **Question 68**

- 1. Are we correct in assuming that only ONE member of the defence team should be nominated as a "case manager". If we have say 3 Grade A fee earners who meet the requirement of Specialist Fraud Panel Supervisors and who have each done more than 3 VHCCs, should we nominate all 3 as "case managers" or only nominate one of them ?*
- 2. When completing the Litigator's Experience Form, if a litigator has done 3 VHCCs is it sufficient to just list the details of the 3 VHCCs (without filling in the final box and attaching evidence of "case experience/hours worked") ?*
- 3. If a litigator has done more than 500 hours but all the hours worked relate to just one VHCC, does this qualify the litigator as being experienced for the purposes of Essential Criteria 1(b) and Desirable Criteria 5(b) by virtue of the number of hours worked rather than the number of cases ?*
- 4. How many Advocates do we need to list?  
Is it a minimum of 2 per case and is there a maximum ?  
Say, for example, a firm bids for 5 VHCCs and confirms an ability to expand by 100%, does the firm need to list a minimum of 10 Advocates (5 cases x 2 advocates) or 20 Advocates (10 cases x 2 Advocates) ?*

## **Answer 68**

- 1. A Case Manager is defined on page 37 of the IFA as the Litigator or Advocate nominated to lead the Defence Team on any particular VHCC. Under Section 5.5 of the VHCC Panel Member Contract, a Case Manager is required for every VHCC. Defence Team Members who have not been nominated as a Case Manager will not be able to undertake the Case Manager role. By nominating more than one Case Manager applicants give themselves more flexibility to meet this requirement.*

2. No. Applicants are required to describe the experience demonstrated in each case. Experience is defined on page 37/38 of the IFA.
3. EC1 and DC5 can be satisfied either by Qualifying Cases or Qualifying Hours. When using Qualifying Hours, it is possible to demonstrate this on one case.
4. Page 6 of the IFA states that the list should include **at least** two Advocates for every VHCC you are bidding for. Applicants are not required to provide Advocate cover for future expansion above the level of their bid.

### **Question 69**

*I have some questions about the definitions of Qualifying Cases and also work carried out by level C litigators who, during the qualifying period qualify as Level B Litigators and form part of the Defence team*

1. *The definition of a "Qualifying Case" on p39 of IFA under (a) refers to a VHCC where the Individual case contract was signed by the applicant organisation during the qualifying period. We have a SFO case in which a VHCC contract was signed in the qualifying period. We were then able to persuade a High Court Judge to release restrained funds to allow us to defend our client privately. The SFO appealed the decision of the High Court Judge to the Court of Appeal who overturned the decision of the High Court Judge and it was then necessary to revert to legal aid. The CCU then said they did not wish to contract this case and it has proceeded on an ex post facto basis. The definition of a VHCC at the foot of p 39 IFA provides that "For the avoidance of doubt applicants may include any case contracted by the CCU subject to the following exceptions - cases contracted by the CCU which subsequently transfer to another approved payment scheme*
  - a) *Can we treat this case as a qualifying case for capacity purposes?*
  - b) *Presumably we can treat this case as a case for qualifying hours for fee earners?*
  - c) *If so, do the hours carried out on private work as well as all legally aided work on this case count towards the qualifying hours?*
2. *We have two fee earners who have completed their training contract with us over the past 3 years and are now Level B litigators. One has carried out work in excess of 500 hours on qualifying cases, partly as a level C and partly as a Level B fee earner. Does the qualification for qualifying hours have to be carried out by the Level B fee earner solely when he/she is a Level B fee earner (in which case we are being penalised for recruiting trainees, allowing them to qualify and keeping them on as Level B fee earners) or can work carried out whilst a Level C fee earner go towards the 500 hours desirable criteria?*

3. *Am I correct in assuming that in the computation of half Level A and B litigators and half of all Advocates nominated to act in a leading role in EC1 and EC2 and DC5 and DC6 level C and junior only Advocates are removed from the equation altogether? Therefore in our firm we have 10 Level A and Level B litigators and two Level C Litigators. On this basis am I correct in assuming that we would need a minimum of 5 Level A and B Litigators to qualify for both the essential and desirable criteria?*
  - a. *Would we be entitled to any more points if we had 10 who qualified under the desirable criteria and all our nominated Advocates had 500 hours if so how many?*

### **Answer 69**

1. If the VHCC was concluded when the client became privately funded, it has not transferred to another approved payment system. The VHCC would count as a Qualifying Case if the Individual Case Contract was signed by the solicitor in the Qualifying Period. Where it was signed prior to the Qualifying Period the hours worked on the VHCC could be used. Privately funded work cannot be used for Qualifying Hours.
  2. The IFA does not state that a Level B must have obtained their experience as a Level B. It will be possible to use experience as a Level C towards the Level B experience . Similarly advocate experience as a Led Junior can be used to qualify as an Advocate in a Leading Role.
  3. Level C fee earners and Advocates nominated only as led juniors should not be included for the purposes of the sections referred to above. Advocates nominated as Junior Alone should be included. If applicants wish to nominate ten Litigators (a mixture of Level A and Level B Litigators), then at least five of them should meet the experience requirements and one of those five must be a Level A Litigator with the necessary experience.
- 3a) The Assessment Table (Annex A to the IFA) sets out the marks awarded for each criterion assessed in the Application Form.

### **Question 70**

*On the meridian computer system, every hearing, conference and hour spent preparing the case is logged.*

*When counsels task list has been accepted and paid, each payment, with the hours agreed are then logged too.*

*When the case is finished these are also presented as a case record for Tax / Vat purposes.*

*Would these fee notes be acceptable as work logs on counsels application form?*

### **Answer 70**

Yes they would, provided they distinguish between preparation, advocacy and travel and waiting.

### **Question 71**

*I am a freelance solicitor and their not employed by any firm and have been asked by 3 firms to join their "team" in their bid for VHCC cases because of my experience of dealing with such cases in the past. Am i allowed to be on more than one team?*

### **Answer 71**

**Please see Answer 33 above. It will however be possible for self-employed Litigators to be included in more than one Defence Team, provided that:**

- a) the approval of the LSC is given to them acting as a sub-contractor for each team;**
- b) each team can meet the minimum experience requirements of the essential criteria; and**
- c) they have a contract with the applicant organisation to undertake such work (i.e. the LSC will not separately contract with the self-employed Litigator. The applicant organisation will be responsible for the work of that Litigator).**

**Please see clause 14.2 of the draft VHCC Panel Member Contract.**

**Please see also the answer to Question 101(4).**

### **Question 72**

*If an advocate is using qualifying cases not hours to fulfil the essential or desirable criteria can you confirm that they do not need to evidence their hours.*

### **Answer 72**

Please see Answer 39 above.

### **Question 73**

- 1. Do you require us to provide you with a list of what we regard to be our qualifying cases with the relevant VHCC ID number together with the VHCC contract number to go with the capacity price bid form. In case there are any discrepancies we would have thought it sensible to include this.*

2. *We have a case which commenced in late 2004 and a contract was signed on 1<sup>st</sup> December, 2004. A further defendant was added to the indictment and on 23<sup>rd</sup> May, 2005 there being no contract, we agreed to act for him and we signed a second contract which now named both clients. The ID number and the contract number remain the same but we did sign two separate contracts. Are we to treat this as one or two qualifying cases.*
3. *We have other cases where we acted for two co-accused but only signed one contract naming the clients. We assume we are to treat this type of case as one qualifying case even though we have acted for more than one defendant.*

### **Answer 73**

1. Please see Answer 7 above.
2. This should be treated as one Qualifying Case.
3. Yes – it is one Individual Case Contract and therefore should be treated as one Qualifying Case.

### **Question 74**

*On page 27 of the IFA you refer to 'The CD ROM must contain files in Microsoft Word format, which should not be condensed'. Will you not accept any scanned documents or documents from programmes other than Word e.g. billing records?"*

### **Answer 74**

We will accept evidence of experience in other formats. All other tender documents must be provided in the format prescribed.

### **Question 75**

Can a Barrister include cases where he has been instructed by the Prosecution in his submission.

### **Answer 75**

Please see Answer 58 above.

### **Question 76**

*I enclose herewith my intended application to be inserted by the relevant solicitors applying to be Panel firms.*

*I believe it would assist me, Chambers in general and solicitors if you were able to indicate approval (or otherwise) of this form before it becomes a part of the application.*

*Please could you also confirm that, as I am using 'cases' rather than 'hours' that I do not need to provide worklogs or other evidence over that which is filled in on the form.*

*In relation to that could you indicate whether the level of detail I have provided is too much, too little or about right?*

#### **Answer 76**

We understand the reasons for this request and proposal, but will not be able to comment on any particular application form or make it available to other applicants. This is a competitive tender in which it is the responsibility of individual applicants to satisfy themselves that they have fulfilled the terms of the application.

It will be necessary for applicants to provide evidence of the work done where they are using Qualifying Cases or Qualifying Hours.

#### **Question 77**

*I am an advocate who has completed 986 qualifying hours in the qualifying period and therefore fulfill desirable criteria 6 (b). On page 11 of the form I have included my hours worked in the qualifying period. Am I required to also describe 'the nature of my experience'?*

#### **Answer 77**

Yes, page 11 of the Application Form asks, "For all cases please describe the nature of your experience"

#### **Question 78**

*Would a case, which was a qualifying case at a previous provider, and following conviction our Firm then took over conduct for the purposes of an Appeal.*

*Following Leave to Appeal being granted a Representation Order was granted by the Court of Appeal for both Advocate and Solicitor. This was due to the issues involved in the case and reflected the amount of work required to ensure the case was properly prepared for Appeal. As such the work included all that expected under a VHCC.*

*Would this count as a Qualifying case (the Representation Order having been granted during the qualifying period)?*

#### **Answer 78**

This would not meet the definition of a Qualifying Case on page 39 of the IFA unless the applicant organisation signed an Individual Case Contract.

## **Question 79**

*Will it be acceptable for a person acting under powers of attorney to sign the application form on behalf of the self-employed advocate members of the Defence Team, and if so, will it be necessary for all the powers of attorney to be appended to the application form?*

## **Answer 79**

Rule 2 of the Conditions of Tender states the Application Form must be signed by all key members of the Defence Team (this has since been varied by Answer 18 above re Litigators). It will be acceptable for a person acting under powers of attorney to sign on an Advocates behalf provided that a completed and legally enforceable power of attorney document is attached to the Application Form. A "Power of attorney: general power" template is available under the Related Documents section of the VHCC tender page on the LSC website.

## **Question 80**

*We would be grateful if you could clarify the following in respect of completing the Tender application form as it is not clear from the IFA. We will give hypothetical example to illustrate the queries and would be grateful for the answers.*

*Eg. Applicant Firm has conducted 5 cases during the qualifying period and intends to bid for 5 cases at the lowest price of £145. It is also willing to expand its capacity in line with client demand by 100%*

- 1. In respect of page 19 DC1: should the applicant firm write "YES" in the £145 box and "NO" in the other 2 boxes or should it just write "YES" in the £145 box and leave the other 2 boxes blank?*
- 2. In respect of page 19 DC2: in the hypothetical scenario above, would the answer to this question be "NO" and if so would the applicant firm have to insert "NO" in the £145 box only ?*
- 3. In respect of page 20 DC3: the hypothetical applicant firm is willing to expand its capacity by 100% at the lowest rate of £145. Should it write "YES" in the top £145 box only or should it write "YES" in that box and "NO" in the other 2 boxes as well under 100%?*
  - 3(a). Does the applicant firm have to submit additional information for DC3 to support its assertion that it is willing to expand its capacity by 100%? If yes, then what additional information is required and is what format?*
  - 3(b). How will the Tender Panel assess and award points for DC3 if an applicant firm states it will expand capacity by 100%?*

4. *In respect of page 20 DC4: in the hypothetical scenario, the applicant firm will be applying for 5 VHCCs, all at £145 rate. Should it write “YES” in the £145 box only and leave the other two boxes blank or should it write “YES” in the £145 box and “NO” in the other 2 boxes?*
5. *Pages 5-6 Litigator’s Experience Form: If a Litigator is using the hours based experience (eg 500 hours under desirable criteria) but those 500 hours were done on 3 different cases, should they still number each Qualifying Case” on the form even though they are not actually using the number of cases based experience? In the box for describing the nature of your experience on page 6 of the application form, should we also include a brief synopsis of the nature of the case as well as a list of the nature of the experience? How detailed should this answer be?*
6. *Page 17 EC9: Do you require any additional/supporting information for the 2 questions under this heading? If so, what additional/supporting information is required and in what format?*

## **Answer 80**

In the hypothetical example given please note that if the applicant bids only at £145 (the lowest price point) and the LSC’s demand can only be met at a higher price the bid by that applicant would not be accepted (see the Selection Process Flowchart at Annex B of the IFA). Applicants would need to bid at all prices if they wish to be considered at all prices.

1. Applicants are required to answer this with a yes or no answer for each price at which they are entering a capacity bid.
2. Applicants would need to enter a yes or no answer at each price they are entering a capacity bid.
3. If an applicant only bids at £145 (and not the other two price points – note the risk above) they should write ‘yes’ in the £145 box and ‘no’ in the £150 and £155 boxes.
  - 3.a) No additional information is required.
  - 3 b) The assessment will be based on the information provided in section DC3. However, the LSC wishes to draw your attention to Annex 13 of the draft VHCC Panel Member Contract, which defines breaches of contract.
4. Applicants should answer yes or no as applicable in each box (i.e. not just ‘yes’ in the £145 box).
5. Please see Answer 41 above.
6. No additional information is required.

## Question 81

### Question 1

*A freelance S-A with over 500 hours wishes to be on the defence team of a number of applicants, sometimes as leading advocate, sometimes as litigator and sometimes as case manager. The position as advocate is clear from the tender document, in that s/he can apply to be on several defence teams (and may be well advised to, bearing in mind certain teams may be unsuccessful), and it is also set out that advocates are to be listed as advocates OR litigators on each application. But what about the SA's capacity to be an advocate, litigator and also a case manager for different firms? So the questions are:*

- 1. Can a freelance solicitor advocate be included in the defence team of Firm A as a) an advocate and / or b) a litigator and / or c) a Case manager at the same time.*
- 2. Can the same freelance solicitor advocate ALSO be included in the defence team of Firm B, C and D, variously as a) an advocate and / or b) a litigator and / or c) a Case manager.*
- 3. Would the position be different if the advocate was a) in part-time employment at (all of) Firms A - D, b) a consultant at Firms A - D, c) a partner at Firms A - D?*

### Question 2

*Can two 500 hour employed litigators in applicant Firm A ALSO be included on the defence team of applicant Firm B? Would the situation be different if a) the litigators were already part-time consultants with Firm B or b) the litigators were already partners in Firm B?*

## Answer 81

- (i) A self-employed solicitor advocate can be included in a Defence Team as either a Litigator or an Advocate but not as both. This does not prevent them undertaking work as both during the Panel Term, providing this does not upset the balance of the team.**
- (ii) A self-employed solicitor advocate can be included in more than one Defence Team as either a Litigator or an Advocate. For the avoidance of doubt, they can be included as a Litigator on one team and an Advocate on a second team. In each team, that solicitor advocate can be nominated as a Case Manager. This does not prevent them undertaking work as both during the Panel Term, providing this does not upset the balance of the team.**
- (iii) The same applies if the solicitor advocate is in part-time employment with; a consultant for; or a partner with a number of applicant organisations.**

2. **Subject to self-employed Litigators, Litigator team members must be employed by the applicant organisation. If the Litigators were part-time consultants with another applicant organisation then they would be treated as a sub-contractor. Please see the answer to Question 71. If the Litigators were partners in another applicant organisation then they would be treated the same as an employed Litigator of that second applicant organisation.**

### **Question 82**

*Can someone be a named litigator in more than one bid?*

### **Answer 82**

Please see the answers to Questions 33, 71 and 81 above.

### **Question 83**

*In the Advocates section, we are asked to supply "evidence (e.g. work logs) to support your case experience and/or hours"*

*As these work logs often run to many pages, is it sufficient to produce the one page Barrister Reconciliation Sheet supplied by the Complex Crime Unit prior to payment?*

*As I understand it, these sheets are generated after Counsel's work logs have been scrutinised and checked against the hours allocated to the task list on the relevant stage*

### **Answer 83**

Yes, this will be acceptable as evidence.

### **Question 84**

*We are considering including a particular case as part of a litigator's qualifying hours. This case is one where, prior to the qualifying period, it was acknowledged by the CCU as a VHCC but the decision was taken not to contract. However, this decision does not appear to have been confirmed in writing by the CCU but over the telephone alone. Would you be willing to accept a copy of our telephone attendance note of this conversation as evidence rather than the requested written communication?*

### **Answer 84**

If applicants are able to obtain confirmation from the CCU that this accords with the CCU's records and if the applicant has the attendance notes to confirm a telephone conversation(s), it will be treated as a Qualifying Case.

### **Question 85**

*Please can you advise me as to whether a photocopy of the signed declaration form from counsel is acceptable?*

### **Answer 85**

**Each application must include one copy with the original signature. The signed form can then be photocopied to provide the additional three copies required.**

### **Question 86**

*If rep order was granted in say april 04 and work was carried out in qualifying period – and case went over 41 days – can this be used?*

### **Answer 86**

The definitions of a Qualifying Case and Qualifying Hours are shown on page 39 of the IFA.

### **Question 87**

*Could you please clarify in relation to adding barristers to the list of advocates:-*

- a) Can any barrister put his/her name forward to be included an application by a solicitor, even if they have not had previous dealings in a VHCC case (see criteria EC2 and DC6 stating "...half of all Advocates nominated...").*
- b) If counsel has dealt with High Costs Cases on behalf of the CPS would these qualify when requesting to be nominated in a leading role.*

### **Answer 87**

- a) Advocates who are nominated only as led juniors do not need any previous experience of Qualifying Cases or Qualifying Hours. It is possible also for Advocates nominated in a leading role to be part of an applicant team, even if they have no experience of Qualifying Cases or Qualifying Hours, as long as the application meets the requirements for Qualifying Cases or Qualifying Hours.
- b) Please see the Answer to Question 51.

### **Question 88**

*If a case – which is contracted – is used for the option b of EC1 – ie hours based application – can I still use this case as a qualifying case as part of my firm's bid in terms of the number of vhcc cases the firm has done?*

### **Answer 88**

Provided the case meets the definition of a Qualifying Case (see page 22 of the IFA) it can be taken into account when calculating your maximum bid.

### **Question 89**

*I hope that you can be of assistance with regards to a query that we have concerning the Equal Opportunities Form which forms part of the VHCC application pack. We have noticed that although you ask for numbers in relation to clients' ethnic background, there appears to be no space on the form itself to insert these numbers. Do you actually want numbers? Or would it be sufficient to simply indicate via the tick boxes which ethnic groups had formed part of our client base since the relevant date.*

### **Answer 89**

The numbers in each ethnic category should be inserted into or alongside the relevant box. Ticking boxes is not sufficient.

### **Question 90**

- 1. For proof of hours logged on 41 day plus cases paid under graduated fee cases, how are counsel to provide proof of hours worked as the cases are billed on the basis of pages of prosecution evidence, witnesses and tapes along with length of trial? Are counsel to provide copy graduated fee claim forms?*
- 2. In order for advocates to provide evidence of case experience and/or hours, it would seem that the best evidence is a copy of the reconciliation form for each stage of work. Will the LSC provide copies of these reconciliation forms in cases that have been paid and concluded and counsel no longer holds a record of? Or can we provide a printout of chambers fees screen showing the hours agreed and then paid by the LSC. If there is any other suggestion from the LSC on this point could it be posted on the website.*

### **Answer 90**

1. If an applicant wishes to use a case for Qualifying Hours as opposed to a Qualifying Case, evidence of the hours they are claiming will be required. On page 23 of the IFA is an explanation on how to convert advocacy days into hours. For example, a 41-day trial, all of which were full days, would on its own produce 287 hours (i.e. 41 x 7). This is without hearings prior to the trial, for which additional hours can be claimed as explained on page 23. If an Advocate wishes to claim for preparation time in addition to this it will be necessary to provide evidence of those hours.

The LSC will provide copies of Reconciliation Sheets where these are readily available. Requests should be made to the CCU.

2. Reconciliation sheets from the LSC would be acceptable evidence. For other types of evidence it is for applicants to satisfy themselves that the evidence provided demonstrates the experience being claimed.

### **Question 91**

*We refer to the heading (IFA p.21) "Putting together your tender – what to bid for".*

*The instructions, with explanations, are next to unintelligible. By definition, each applicant must have had experience of a number of historic contracted cases. They may bid for the number of VHCC's permitted by the formula contained in the IFA. To take an example, an applicant qualified by 2 historic cases within the prescribed period could bid for up to 4 VHCC cases.*

*In bidding, such an applicant must provide estimates of what these bids mean in terms of hours ('indicative hours' IFA p.10), based on the best estimate of a VHCC's size for that applicant. Obviously the applicant is meant to draw on experience of the 2 qualifying cases in the example. There is no indication however to which 'VHCC size' or category of future cases the applicant should direct his experience. In the example it is possible that the applicant firm, using its qualifying Defence Team, could free up sufficient hours, by restructuring its Magistrates Court and Pace Teams, to provide hours to cover, say, between 7-14 Cat 4, 4-8 Cat 3, 1.3-2.6 Cat 2, and at the upper range 1 Cat 1. That would, of course, demonstrate a high commitment to VHCC panel work. If those hours were provided, without explanation, in the applicant's bid, it might also suggest a lavish and extravagant waste of hours if the indicative hours were meant somehow to relate to the 2 qualifying cases (and their categories), on the footing that the applicant must assume his bid relates to similar cases. What is the relationship therefore between 'indicative hours' and the future number of VHCC cases for which the applicant bids and does a guess at their possible categories enter into any calculation?*

### **Answer 91**

On the Capacity-Price Bid Form applicants will need to indicate how many VHCCs they are bidding for over the Panel term. Applicants are also asked, based on their own experience, to provide estimates of how these bids translate in terms of hours. This calculation should be based on the best estimate of a VHCC size for that applicant assuming that future cases would be similar to those previously conducted.

## Question 92

Having read your question and answers updated to 13<sup>th</sup> June, I have the following question.

*In question 18 d, you were asked about representation orders for vhcc cases. You replied that they were not necessary for vhcc cases as you already had that information on file. Given this, can you confirm that it is still necessary to provide you with the dates of contracts being signed, when again you already have access to this information for vhcc cases?*

*Secondly, where counsel is relying on vhcc cases with either 300 hours, (essential) or 500 hours (desirable), can you confirm that VHCC 5 payment forms will be sufficient evidence of hours worked? I would suggest that they are as these are a log of agreed hours.*

## Answer 92

1. The date the VHCC Individual Case Contract was signed is required to demonstrate that it is a Qualifying Case.
2. Reconciliation Sheets will be acceptable but VHCC5s will not as they do not show the hours on which the payment has been made.

## Question 93

*If a member of the Bar has been instructed during the Qualifying Period to prosecute a case set down at the PCMH for a trial due to last 60 days or more, and on the first day of the trial the defendant pleads, can the prosecution advocate advocate use this case as a "qualifying case". [i.e. it is a VHCC case for the defence advocate]. ?*

*If the answer to the above is "No", can the work carried out in respect of the aforementioned case count towards the 300 Qualifying Hours required for a nominated advocate ?*

*As I understand it there is no formal requirement if a barrister is included as a Panel Advocate to act as Junior counsel [acting alone or being led] (i.e. not in a leading role) to satisfy the 2 qualifying cases test or the 300 qualifying hours test?*

## Answer 93

The definitions of Qualifying Cases and Qualifying Hours do not include cases where the Advocate was instructed by the Prosecution.

Advocates nominated as led junior only do not need to be included in the assessment against the essential criteria or desirable criteria. The Definition of "leading role" on page 37 of the IFA does however include those nominated to act as Junior Alone.

## **Question 94**

*We would be grateful if you could clarify the following in respect of completing the Tender application form as it is not clear from the IFA. We will give a hypothetical example to illustrate the queries and would be grateful for the answers.*

*Eg. Applicant Firm has conducted 5 cases during the qualifying period and intends to bid for 5 cases at the lowest price of £145. It is also willing to expand its capacity in line with client demand by 100%*

- 1. In respect of page 19 DC1: should the applicant firm write "YES" in the £145 box and "NO" in the other 2 boxes or should it just write "YES" in the £145 box and leave the other 2 boxes blank?*
- 2. In respect of page 19 DC2: in the hypothetical scenario above, would the answer to this question be "NO" and if so would the applicant firm have to insert "NO" in the £145 box only ?*
- 3. In respect of page 20 DC3: the hypothetical applicant firm is willing to expand its capacity by 100% at the lowest rate of £145. Should it write "YES" in the top £145 box only or should it write "YES" in that box and "NO" in the other 2 boxes as well under 100%?*
  - 3(a). Does the applicant firm have to submit additional information for DC3 to support its assertion that it is willing to expand its capacity by 100%? If yes, then what additional information is required and in what format?*
  - 3(b). How will the Tender Panel assess and award points for DC3 if an applicant firm states it will expand capacity by 100%?*
- 4. In respect of page 20 DC4: in the hypothetical scenario, the applicant firm will be applying for 5 VHCCs, all at £145 rate. Should it write "YES" in the £145 box only and leave the other two boxes blank or should it write "YES" in the £145 box and "NO" in the other 2 boxes?*
- 5. Pages 5-6 Litigator's Experience Form: If a Litigator is using the hours based experience (eg 500 hours under desirable criteria) but those 500 hours were done on 3 different cases, should they still number each "Qualifying Case" on the form even though they are not actually using the number of cases based experience? In the box for describing the nature of your experience on page 6 of the application form, should we also include a brief synopsis of the nature of the case as well as a list of the nature of the experience? How detailed should this answer be?*
- 6. Page 17 EC9: Do you require any additional/supporting information for the 2 questions under this heading? If so, what additional/supporting information is required and in what format?*

## **Answer 94**

Please see answer to Question 80.

### **Question 95**

*I would be grateful to receive clarification of the requirement for at least half of Grade A and B litigators to have had relevant experience. Would the requirement be satisfied if, for example, the application includes a Grade A litigator with relevant experience and a Grade B without?*

### **Answer 95**

It would be satisfied if these are the only nominated Litigators.

### **Question 96**

*I would be grateful if you could please assist- I signed a contract for a VHCC in September 04 but my solicitor signed the contract in April 04 (outside the qualifying period) As I signed my contract within the qualifying period is the case a qualifying one.*

### **Answer 96**

A Qualifying VHCC is defined on page 39 of the IFA as one where the Individual Case Contract was signed by the applicant organisation during the Qualifying Period. However, it would still be possible for you to use the hours worked during the Qualifying Period - see the definition of Qualifying Hours on page 39 of the IFA.

### **Question 97**

*We have a solicitor with substantial experience in VHCC work however has only seven and a half years post qualification. This solicitor had substantial experience pre-qualification approximately 7 years. Will she qualify for Grade A status for the purposes of applying to be on the Panel.*

*We appreciate the criteria says eight years but given the previous experience, are there any exceptions to this rule?*

*Can we just clarify that in terms of qualifying experience, the firm collectively needs to have conducted at least Two VHCC cases or qualifying cases and not each individual. Also could you just confirm for nominated case managers the minimum individual experience required.*

*We also had a VHCC where we were representing three of the defendants, does this count as three VHCC's or one for bidding purposes?*

### **Answer 97**

There is no exception to the post qualification experience required to meet the definition of a Level A Litigator.

Please refer to EC1 on page 33 of the IFA which sets out the experience requirement for individual Litigators. Please note this is not assessing the experience of the firm.

The experience requirement for nominated Case Managers is defined in EC3 on page 33 of the IFA.

The definition of Qualifying Cases for the purposes of an applicant's bid is shown on page 39 of the IFA. Assuming the applicant organisation signed only one Individual Case Contract covering three defendants it will count as one case.

### **Question 98**

- a). *We are proposing a solicitor with who will have 8 years post qualification experience in November of this year as our grade A litigator for our defence team. Prior to qualification she had 10 years experience in case preparation. This Solicitor more than meets the desirable criteria .We do not think our other grade A solicitors meet the essential number of hours in the qualifying period although they have conducted VHCCs outside the period. Can we claim the above solicitor as grade A based on her previous experience and nearly eight years post qualification?.*
- b). *In terms of our other grade A Solicitors, it is only the hours of work conducted within the qualifying period that can be counted as experience, if the VHCCs was signed pre qualification period?*

### **Answer 98**

- a) Please see the answer to Question 97.
- b) This is correct. Only the Qualifying Hours may be counted, providing the hours meet the definition of Qualifying Hours contained within the IFA.

### **Question 99**

*Could you please confirm that you wish all four hard bound copies and the one unbound copy of the completed capacity price bid form to go into a single sealed envelope marked on the front capacity price bid form for [name of applicant]. Could you also please confirm that you wish this to be put onto a CD rom. Do you want the CD rom to go into a separate sealed enveloped or the same sealed envelope?*

### **Answer 99**

All of the copies of the Capacity-Price Bid Form must be placed in the same sealed envelope, which will not be opened until application form has been assessed against the essential and desirable criteria.

The instructions on page 27 of the IFA state that the Capacity-Price Bid Form should be on the CD Rom.

The CD Rom should contain all the information requested in item 6 on page 27 of the IFA and should not be placed in the envelope containing the Capacity-Price Bid Forms. It is for applicants to organise how the CD is included with their overall application. The electronic version of the Capacity-Price Bid Form on the CD Rom should be clearly labeled.

## **Question 100**

*Re Advocates forms. If I have one case that qualifies that barrister for 500 hours do I need to list the other VHCC cases hes done as well*

## **Answer 100**

If the applicant is satisfied that a single case meets the requirements of DC6 on page 36 of the IFA there is no need for that applicant to list other cases.

## **Question 101**

- 1a). On Page 38 of the IFA the definition of level A litigator at para.c is at best confusing for the following reasons: c) i)- Please advise in what context 'other' is being used .*
- 1b). If one considers para c i) -iii), they seem to be inconsistent with the requirements of para c.iv - please clarify.*
- 1c). Are we right in believing that a level A litigator qualifies by paragraph c (ii) by simply having conducted 700 hours on serious crime in any 2 of the last 3 years (and similarly for the 1050 hours in c (i))? Is the 700 hours additional to the hours required by the essential or desirable criteria?*
- 2. Page 5 of the Application form refers to the date of the first Representation Order for each client - in the case of a transfer, do you require the very first date or the date of the transfer of the order?*
- 3. If a case is transferred after sentence for the confiscation proceedings only and there is a full contested confiscation hearing, does this satisfy the definition of 'case prepared to trial'?*
- 4. How do we obtain permission during the tendering exercise for self employed litigators who have undertaken substantial work for the organisation, are properly supervised and approved by the CCU as fee earners, to conduct work on contracted cases, but are remunerated on a consultancy basis?*
- 5. Do you require all original signatures in one copy of the application form?*
- 6. In relation to advocates signing section 3 of the application form, do solicitor advocates who have applied as litigators and who are partners in an LLP but who have also applied as led juniors on page 2 of the form, have to sign section 3 even though they are part of the litigator organisation?*
- 7. On page 2 of the VHCC panel Capacity Price Bid Form, does the estimate of hours in relation to the bid relate to litigator hours only and is it to include travel, waiting and sitting behind counsel at court in addition to preparation?*

## Answer 101

- 1a) Please see the answer to Question 14 above.
  - 1b) The purpose of c(iv) is to enable Litigators whose hours of serious crime cases do not fulfil the number required in either c(i) or c(ii) but who can meet one but not both parts of c(iii) to combine their partial contribution to each to qualify under c)
  - 1c) This is correct but, to be treated as a Level A, they must also meet a) and b). The hours in c(i) or c(ii) would count as Qualifying Hours provided they meet the definition of Qualifying Hours.
  2. As stated in the answer to Question 18(d) it is not necessary to include this information for VHCCs. It is required for any non-VHCC Qualifying Cases. The date required is the date of the Representation Order transferring the case to the applicant litigator firm.
  3. The definitions of “prepared to trial” on page 39 of the IFA consist of activities that take place before the start of a trial. As confiscation takes place after the end of a trial, the case described would not count as prepared to trial. The hours spent on the case could be used towards the total hours required as long as it satisfies the definitions in EC1 and DC5.
  4. **Self-employed Litigators should apply as part of a Defence Team and identify themselves on the Application Form that they are a self-employed Litigator. If the application is successful, the Panel Member would be authorised to sub-contract VHCC Work to that individual. The LSC would not directly contract with that self-employed Litigator. Accordingly, the Panel Member would be responsible for the work of that Litigator.**
  5. Original signatures are required on one copy of the submitted application form. This application form should then be photocopied in full to provide the further three copies required.
  6. It is not a requirement that all Litigators employed by an organisation should sign the application form. The form should be signed by an appropriate representative authorised to sign for applicant organisation (e.g. Managing Partner or another Senior representative).
- Key Defence Team Members must apply as either a Litigator or an Advocate, not both.
7. The estimate of hours is a “best guess” and as such does not need to be broken down into discrete elements. An overall global figure of the applicant firm is sufficient.

### **Question 102**

*I have a query that I hope you can help me with in regard to the VHCC Panel Application Form for Experienced Advocates.*

*Contained within the VHCC Panel Application Form is a declaration that each member of the defence team must date, sign, print their name and state their status. My query is can we use electronic signatures on these forms or do they have to be live signatures?*

### **Answer 102**

See the answer to 101 (5) above. There must be at least one copy of the application form with original signatures on.

### **Question 103**

*Under your Information for Applicants guidance a level A Litigator must have conducted a total of 1,050 hours during the last 3 years or 700 hours in any 2 of the last 3 years on "other" serious crime cases.*

*Does this mean that the work carried out by the level A Litigator on the Qualifying Cases is excluded in calculating the 1,050 or 700 hours?*

### **Answer 103**

The work carried out on Qualifying Cases **can** be included in the definition of a Level A Litigator provided that all other parts of the Level A Litigator definition are met.

**ANSWERS TO QUESTIONS RECEIVED UP TO 5PM ON TUESDAY 3 JULY 2007.**

**Question 104**

*Is it necessary for advocates in respect of contracted cases to provide evidence of hours/work done? We assume that you already have this information.*

*We understand that for litigators the position is different since the contract is with a firm and your records show only how many hours at what grade were performed rather than by which litigator. We also understand why you need it for grad fee cases. For contracted cases it seems unnecessary.*

**Answer 104**

All applicants are required to provide evidence of any work that they wish to claim on the Application Form. This should be sufficient to support any claim for Qualifying Hours and/or experience (as defined in the IFA). Please also see Answer to Question 83.

**Question 105**

*In the recently published Litigator Fee Scheme the 25-40 day cases which may be subject to VHCC has been suggested as follows:*

*"4.4*

*Accordingly, the LSC seeks practitioners' views on the option of a possible escape to the VHCC contracting system for cases of 25 days or more where the unused exceeds 10,000 pages, and where the case meets an additional factor as set out in the VHCC scheme 25 – 40 day criteria as set out below:*

*"We will contract all 25 – 40 day cases from the SFO, all Terrorism cases and all those with 5 defendants or more.*

*We will contract all those which have 2 or more of:*

- 10,000 or more PPE*
- 10,000 or more pages of unused*
- a Representation Order exists for QC and led junior*
- expenditure on experts likely to be at least £10,000."*

**Complex Cases**

*4.16 We anticipate that there may be occasions where a Crown Court case, which is within the LGFS remit, nonetheless has the hallmarks of an exceptionally complex or unusual case. This will apply to cases that last or are likely to last 25 to 40 days at trial. It is proposed that such cases should be dealt with by contract under the VHCC system. The VHCC criteria can be found in paragraph 4.4 of this document."*

*If these cases are likely to be subject to the VHCC regime , why can't these cases be used as a qualifying case by Firms for the purpose of tendering?*

*If not, why is the VHCC tender being consulted upon before the Litigator Fee scheme is decided upon?*

### **Answer 105**

The inclusion of some 25 to 40 day cases in the future definition of a VHCC followed a recommendation from Lord Carter. As previous cases meeting this definition were neither contracted as VHCCs nor cases where the trial estimate was 41 days or more they would not have been appropriate experience to use. The only exception to this would be those 25 to 40 day cases that were actually contracted prior to August 2004.

The view being sought as part of the Litigators Graduated Fee Scheme ("LGFS") is not whether the criteria being implemented for 25 to 40 day VHCCs are appropriate, as these criteria have already been confirmed for implementation. The LGFS is asking for views on whether this escape to the VHCC system for LGFS cases with exceptional levels of unused material (>10,000 pages), where the case also meets one additional VHCC criteria, provides sufficiently for cases within the LGFS with excessive levels of unused material, or whether practitioners believe the LGFS should include any additional provisions for excessive unused."

### **Question 106**

*In the qualifying hours for those appointed as leading counsel in our bid can counsel use hours in cases where they were prosecuting counsel but in the defence case it was contracted? We wish to maintain a balance to our panel and choose counsel with a wider experience than just using those with solely experience of defending VHCC cases. Please therefore let us know as soon as possible whether such cases can count.*

### **Answer 106**

Advocates may use any Qualifying Cases or Qualifying Hours to demonstrate experience (if required). Prosecution work is not included in the definition of Qualifying Hours or Qualifying Cases. As only half of the Advocates nominated to act in a leading role (i.e. QCs, Leading Juniors and Junior Alone) in a Defence Team need to meet the experience criteria requirements, it is possible for the applicant to include those who have acted for the Prosecution on such cases, as long as the essential criteria are met.

### **Question 107**

*With regard to providing evidence in support of experience - is it sufficient to send in copies of agreed task lists from contracted cases or do you also require VHCC 5 forms? If so, are you willing to provide us with copies of these as you already hold this information and in many instances it is time consuming and difficult to trace?*

### **Answer 107**

Supporting evidence should be sufficient to demonstrate that the experience being put forward (by the Key Member of the Defence Team) meets the definition of experience contained in the IFA. If the evidence clearly demonstrates this then it would be sufficient. Such evidence may include work logs or billing guides, but we will also accept VHCC Reconciliation Sheets for Advocates if the CCU are able to provide them. Agreed task lists would not be acceptable as they only evidence the work agreed, not work done nor who did the work

### **Question 108**

*Can you assist in the following respects to clarify the criteria.*

- 1. Why do VHCC cases signed and completed before the 21st May 2004 not qualify since such cases were VHCC?*
- 2. What is the reason for such an arbitrary date?*
- 3. Your Information paper does not appear to state whether under 'essential Criteria' the 300 hours or under 'desirable' the 500 hours is on one case or spread over more than one case.*

### **Answer 108**

- 1 and 2. The LSC consulted upon the proposed tender process early in 2007. The Qualifying Period was put forward at this time. There were no responses that suggested that this period was unreasonable. It is possible to include hours worked on such cases during the Qualifying Period. Please refer to the Selection Criteria table on pages 33 to 36 of the IFA and the definition of Qualifying Hours on page 39 of the IFA.
3. The hours referred to may be demonstrated on one or more cases. Applicants should ensure that this meets the definition of Qualifying Hours on page 39 of the IFA.

### **Question 109**

- 1. I understand there is to be one unified list of approved Counsel, so that by being accepted by one solicitor (who is successful in there VHCC bid) Counsel need not apply to any other firms?*
- 2. Are Prosecution cases acceptable when calculating Counsels' experience?*
- 3. Is there an A and B list of approved Counsel?*
- 4. If Counsel has signed a VHCC contract in the required period is that sufficient or should they have also completed in excess of 300 hours on the Case?*

### **Answer 109**

1. Advocates who are listed as Key Defence Team Members on a successful application will be added to a consolidated VHCC Advocate List and become Panel Advocates. Please also see the answer to question 12.
2. Prosecution cases do not form part of those cases listed as Qualifying Cases nor are the hours considered as Qualifying Hours.
3. Advocates who are only listed as Key Defence Team Members on an application where the applicant is invited to form part of Panel B will be added to a consolidated VHCC Panel B Advocate List. They will not be part of the VHCC Panel A Advocate List unless they are part of another bid team that was successful and formed part of Panel A. In these latter circumstances they would be on Panel A and be placed on the published list (see 1 above).

Panel B Advocates will only be able to work on VHCCs where an exception has been granted by the CCU for a Panel B Member to represent the VHCC client.

4. As part of the essential criteria there is a requirement for at least half the leading advocates in a Defence Team to be able to demonstrate either two Qualifying Cases **or** 300 Qualifying Hours

### **Question 110**

*Please can you confirm the following:*

- 1) That where a relevant defence team member has LIMITED experience of Qualifying Cases (and whose experience is therefore not relied upon for the purposes of the application) a litigator form need not be completed. Our understanding is that a litigator form need only be completed for each member of the team (level A or B litigator) whose experience of qualifying cases is relied upon (we are of course aware that at least half of the litigators must have experience - EC1)*

- 2) *That a litigator who is also an advocate can be nominated as an advocate as well as a litigator and case manager.*
- 3) *With reference to Annex A - Desirable Criteria, DC1 and DC2, please confirm that the wording in the adjacent 'comments box' should read: "Applicants bidding for contract capacity in excess of **half of** [words added] their previous years' contract numbers would be considered more desirable than those bidding for the same contract capacity." There appears to be an inconsistency between DC1 and the explanatory comments.*

#### **Answer 110**

1. That is correct.
2. A Litigator who is an Advocate may be nominated as one or the other, **not both**. Please also see the answer to question 81.
3. The wording in DC1 is "The capacity bid is for more than half the number of Qualifying Cases conducted in the Qualifying Period" and in DC2 "The capacity bid is equal to half the number of Qualifying Cases conducted in the Qualifying Period". These statements are correct. The Qualifying Period is approximately 3 years in length and the Panel term is to be 18 months. A bid in excess of half of the Qualifying Cases would represent growth and would be awarded 7 marks under DC1; such a bid would be considered more desirable than a bid equal to half the number of Qualifying Cases conducted during the Qualifying Period, which would only be awarded 6 marks under DC2. Bids of less than half the number of Qualifying Cases conducted in the Qualifying Period would not get any marks under either DC1 or DC2.

#### **Question 111**

*"If we have 12 Qualifying cases, is it correct that we can bid for a maximum of 12 but can express a willingness to expand those 12 by either 20% or 50% or 100%?"*

#### **Answer 111**

That is correct.

### **Question 112**

*Please can you clarify whether experience acquired by a Grade B litigator, when they were a Grade C, can now be used as part of their relevant experience when fulfilling the requirement in EC1.*

### **Answer 112**

Please see answer to Question 69(2).

### **Question 113**

*We would be grateful if you would please just confirm the criteria for applying.*

*Does a reported case within the last 2 years which was not contracted count?*

### **Answer 113**

Please note the criteria for Qualifying Cases, Qualifying Hours and Qualifying Period on page 39 of the definitions section contained in the IFA.

### **Question 114**

1. *I am v confused about the foot note c on page 3 of the application form - Experience litigators*

*I have one litigator who only has experience of one VHCC - so he does not meet EC1 a. However the case is a qualifying case and he has conducted more than 300 hours in the qualifying period. If I use those hours does that prevent me from using the case as a qualifying case as previous capacity for the firm's bid? That's what footnote c seems to imply?*

2. *Why don't Army legal aid cases qualify – they are funded by the Army Criminal legal aid authority – a government body – and the case was run as a contracted case –ie stage plans and staged payments.*
3. *Can the 300 or 500 hours experience be made up from more than one case?*

### **Answer 114**

1. Footnote c) refers to non-VHCCs which may be Qualifying Cases but the question does not appear to relate to that.

The demonstration of the experience of any individual member of the Defence Team does not mean that such experience cannot be used to calculate the previous capacity for the purposes of an applicant's bid. Please note pages 21 and 22 of the IFA with regard to Qualifying Cases for the purposes of calculating maximum bids and the definitions of Qualifying Cases and Qualifying Hours for the purposes of bid team members' experience.

2. There are a number of case types that are not counted as Qualifying Cases and Army Legal Aid cases are amongst these. The LSC has consulted upon its proposals and has made adjustments where sensible. We did not receive any consultation responses relating to Army Legal Aid Cases, and the consultation has now closed.
3. Please note part 3 of the answer to question 108

### **Question 115**

*Does it follow from your answer to Question 54 that where you ask Advocates “to provide evidence (e.g. work logs to support [their] case experience and/or hours...” (at page 11 of the Application Form) “case experience” should be read as “number of cases” rather than as referring to Experience in its defined meaning – for, if the latter, this would risk breaching confidentiality and data protection?*

### **Answer 115**

Where Advocates are asked to provide evidence in support of their application, this is evidence to support either the number of Qualifying Cases or the number of Qualifying Hours they are claiming as part of their application. Advocates are not required to provide evidence in terms of, for example, an advice on evidence or preparation notes for cross examination, as this would risk breaching confidentiality and data protection. Advocates are reminded, however, that they are asked to describe the nature of their experience.

### **Question 116**

*This application process is most unfairly timed to end just after school holidays have begun. The application procedure is so complicated that much more time should have been allowed to complete the forms, and certainly not to coincide with Summer Holidays.*

*We urge you to extend the deadline for submission of these applications by four weeks.*

*We also consider it most impersonal and indeed worrying that nobody at the L.S.C is available or prepared to answer simple enquiries about the completion of the form*

## **Answer 116**

We deliberately planned to avoid all or nearly all of the school holiday period by planning to end the tendering period on 20 July. However, as advised on our website, it was necessary to delay the start and end date of the tendering period to accommodate a request from the Law Society for two additional weeks to respond to the consultation on the final changes to the VHCC Panel Contract. By allowing applicants nearly eight weeks from 5 June to submit tenders, we consider that we have still enabled applicants who need to be absent during school holidays to prepare their applications. Having set out the terms of the tendering exercise, the timing and duration for which were included as part of the consultation on the scheme, it is not possible for us now to extend the tendering period.

The policy of not answering individual questions on an individual basis is in place to make the tendering process as open and transparent as possible, so that any additional information provided by the LSC on the tendering exercise is available to **all** applicants. Simple questions about completing the application can, in most instances, be answered by reading the Information for Applicants and application forms.

## **Question 117**

*There appears to be a contradiction between questions/answers 42 and 54. Can you clearly state as to whether or not you require ALL advocates to complete the experience section even though the applicant organisation is only relying upon half of the applicates to demonstrate their experience. Answer 42 seems to suggest you want all advocates to provide their experience come what may. Answer 54 seems to suggest that half of the advocates nominated to act in a leading role are to provide specific information relating to their Qualifying Case experience. Could you please answer this as a matter of urgency because it directly affects the completing of the application form.*

## **Answer 117**

Our apologies for the confusion. Both answers are correct but cover slightly different points. When looking at which Advocates should provide information relating to their experience, then question 54 is correct - i.e. half of the Advocates nominated to act in a leading role must meet the specific experience requirements as detailed in the essential criteria and must provide specific information relating to their Qualifying Case experience. This also applies to the desirable criteria on experience.

### **Question 118**

*We are in the process of trying to prepare a bid for the VHCC Panel. It appears to us that we may, in fact, may not be in a position to bid at all because we have not conducted any “qualifying cases” because the two matters we have undertaken under High Cost Case Contracts were both signed prior to 21 May 2004 (2003 and February 2004) and we do not have any cases which qualify under the other criteria.*

*Is there any way that we can still rely on these cases as the basis of our bid?*

### **Answer 118**

If these cases do not qualify as Qualifying Cases they may be able to demonstrate Qualifying Hours. Please see the definition of Qualifying Hours on page 39 of the IFA.

### **Question 119**

- 1. If a Solicitor Advocate applies as a Level A Litigator in the defence team can they also act as an Advocate (led or leading) despite not being a named Advocate on the application form?*
- 2 Can a Level A Litigator named on the application form and accordingly part of the Defence team be a self employed Consultant with the applicant firm?*

### **Answer 119**

1. A solicitor advocate who is nominated as either a Litigator or an Advocate on the Application Form may act in either or both roles if the relevant applicant's application is successful, provided this does not upset the balance of the Defence Team.
2. Yes, a Level A Litigator named on the Application Form may be a self-employed consultant. However, s/he may only be included in the application of one applicant. See page 6 of the IFA: work on VHCCs can only be carried out by employees of the Panel Member (the successful applicant organisation), Panel Advocates or any other individual member of the Defence Team. Anyone else who is self-employed cannot conduct work on VHCCs without the CCU's express prior written permission. Please also see the answer to Question 71.

## **Question 120**

*Firstly if a firm is say applying to undertake a minimum of 8 VHCCs is it restricted in putting forward a maximum 16 advocates i.e., 2 per case at least 8 of whom have the minimum requirements, or not .Furthermore as led juniors are in a different category I presume there is no restriction on how many are put down*

*Secondly can leading junior advocates be nominated as junior alone as well, I am sure they can but just checking to be sure*

## **Answer 120**

There is no maximum on the number of Advocates in a team but the applicant must ensure that the leading Advocates nominated meet the experience requirements set out in EC2 of the essential criteria. The applicant also has to confirm in the Application Form (at EC9) that the team being put forward has the skills and expertise to conduct the work they are bidding for. Leading juniors can be nominated also as juniors alone – see definition on page 37 of the IFA.

## **Question 121**

*We have a problem in relation to the interpretation of essential criterion EC1. Within the qualifying period we are able to include 2 cases - one was prepared to trial and one is ongoing, in the process of being prepared for trial. In forming our litigator team, we would propose to rely on para (a) and create a team of 6 litigators, 3 of whom have experience in relation to the 2 qualifying cases (the remaining 3 team members would not meet the experience test). The apportionment of the 2 cases relied on is as follows:*

*Litigator 1 (level A): involved as supervisor in both cases but not involved in significant preparation in either case.*

*Litigator 2 (level B): substantially involved in concluded case; allocated to ongoing case but preparation to date mainly undertaken by fee earner 3.*

*Litigator 3 (level B): not involved in concluded case; substantially involved in preparation of ongoing case.*

*Litigators 4, 5, 6: not previously involved in qualifying cases and therefore do not meet experience criteria under para (a).*

*Our question initially is whether EC1a requires us to demonstrate whether litigators 1-3 (ie half the team) COLLECTIVELY have experience of 2 qualifying cases or whether EACH of them individually must have experience of 2 qualifying cases. If the latter is the case, then the only team member with sufficient experience is litigator 1 who has supervised 2 cases and possibly litigator 2 - depending on whether you regard his allocation to the ongoing case as "experience".*

*Our second question is whether it is possible to "mix and match" paras (a) and (b) of EC1 ie by putting some fee earners forward on the basis of their experience of qualifying cases (Fee earners 1 -3 above) and some fee earners on the basis of qualifying hours (fee earner 4 has not worked on a qualifying case but has worked for in excess of 300 hours on a case where the contract was signed prior to the qualifying period but the case was concluded within the qualifying period).*

### **Answer 121**

The experience criteria refer to the experience of individuals, not their collective experience. This applies to EC1, EC2, EC3, DC5, DC6 and DC7.

Under EC1, nominated Litigators must have experience of (a) at least two Qualifying Cases, at least one of which must have been prepared to trial in the Qualifying Period, OR (b) 300 Qualifying Hours in the Qualifying Period. Some nominated Litigators may have experience of (a) and some may have experience of (b) so, yes, you may "mix and match" experience.

If applicants are relying on Qualifying Cases, they must be able to demonstrate that the experience gained from those cases meets the definition of "Experience" on pages 37/38 of the IFA.

Under EC1, applicants nominating Litigators who cannot provide experience of two Qualifying Cases each may provide experience of 300 Qualifying Hours each, which may come from a single case.

### **Question 122**

*I thank you for answering my previous questions. I have as a result the following, that I request you answer to assist those applying for Panel/ Advocate membership.*

- 1) In the answer to my previous question (47-i), you state that 'Reconciliation sheets can be used, if further evidence is provided to demonstrate that the work meets the definition of experience detailed in the IFA'. It is our intention to provide reconciliation sheets as evidence of qualifying hours. Will a short description of the substantial involvement from each Advocate, for each case suffice, as per page 37/38 of the IFA?*
- 2) Having read question 18 e), can you please clarify the following, which is causing confusion. You confirm that if there are not sufficient numbers to meet capacity needs at either of the lower rates, the bid will become void. Therefore, if a firm is bidding for 6 cases, and they are willing to work for the lowest rate, can they enter 6 in each of the bid rates, incase demand is not met? Eg on the Capacity Bid Form, 6 cases in the column for each hourly rate.*

*I believe this question will assist many suppliers, as one would presume that if they entered bids at the lower rate then they would obviously also bid at the higher hourly rate.*

## Answer 122

A written explanation of the experience gained / work undertaken during the Qualifying Hours would be sufficient if it demonstrates “substantial involvement” in the case.

If an applicant is willing to bid for 6 VHCCs at each price point (£145, £150 and £155), it should enter ‘6’ under each price point in the first column of the Capacity-Price Bid Form (and complete the remaining boxes as appropriate). It should also answer yes/no as appropriate in each of the price point boxes in the ‘desirable criteria’ section 2 of the Application Form.

If an applicant only enters a bid at the lowest price point (£145) it will not be assumed that it is willing to be considered at the higher price points. As stated on page 3 of the Capacity-Price Bid Form under ‘Note’, if an applicant chooses not to enter a bid at any price point, it risks being unsuccessful if capacity is met at the price it failed to bid at. See the ‘Selection Process Flowchart’ at Annex B to the IFA.

## Question 123

*Within the application form sections EC4 and EC5 appear to be tick box answers, is evidence of those answers required?*

## Answer 123

Applicants are only required to indicate compliance with these requirements. No evidence is required. Applicant organisations sign a declaration at Section 3 of the Application Form attesting to the accuracy of the information on the Application Form. Applicants are also advised to read the ‘breach of contract’ annex attached to the draft contracts for Panel Members and Panel Advocates.

## Question 124

1. *In regard to the size of bids, there appears to be some difference between the responses given to questions 11 and 18(e) and that given to the most recent question on this subject, 52(b). EC8 states that "applicants may not bid for more than the greater of (a) four VHCCs or (b) the number of Qualifying Cases conducted ... at each of the prices for which the applicant submits a bid". The responses to questions 11 and 18(e) seem to confirm that if the maximum an applicant can bid for is four cases, this means he is permitted to enter a bid of four at each of the lower, median and higher prices. Although the response to question 52(b) seems to agree with this in its first sentence, it then goes on to say that the minimum and maximum bid should be noted when considering the volume an applicant wishes to bid for. Please would you therefore clarify the situation by answering the following specific question: if our maximum allowable bid is four cases, may we enter this sized bid at all three prices or are we restricted to just bidding at one price? If the latter is the case, does that mean that only firms that have a minimum of nine qualifying cases can bid at all three prices and firms with less cases have to effectively gamble on the price at which a panel is likely to be formed?*

2. *In regard to Qualifying Cases that have been transferred to another organisation, we understand from the IFA that they may be included as Qualifying Cases provided two stages of work or twenty-four weeks of work were undertaken prior to transfer. Does this twenty-four weeks of work refer to work undertaken after the date the contract was signed or twenty-four weeks from the date the representation order was granted?*
3. *The application form states that if we intend to meet the experience criteria by way of Qualifying Hours rather than Qualifying Cases, the cases to which these hours relate cannot be used for the purposes of calculating the size of our bid. Does this therefore mean that if, for example, we have six Qualifying Cases but only intend to bid for four cases we may use the hours from the remaining two Qualifying Cases in order to meet the Qualifying Hours criteria?*

#### **Answer 124**

1. Under EC8, the applicant must not have applied for more than the greater of (a) four VHCCs or (b) the number of Qualifying Cases conducted by the applicant during the Qualifying Period at each of the prices for which the applicant submits a bid.

If an applicant's maximum allowable bid is four cases, and it wishes to enter a bid for the maximum at each of the three price points, it should enter a bid for four VHCCs at all three price points (and not just bid for four VHCCs at one price point).

2. The twenty four weeks (or at least two stages) should be taken from the date that the Individual Case Contract was signed by the applicant organisation.
3. There is a distinction between the maximum bid calculation and the experience required by individual members of a Defence Team. For the avoidance of doubt, there is no overlap that requires applicants to choose to use their experience as part of the applicant's maximum bid size or as an individual's experience. A Qualifying Case may be used both by an applicant to calculate the maximum bid size and by its Litigators to demonstrate individual experience as a result of work undertaken on that case (providing it meets the definition of experience in the IFA). Where Qualifying Hours are used to demonstrate experience, these cases could also be used to calculate maximum bid size if they count as Qualifying Cases (see p21/22 of the IFA).

### **Question 125**

*WE HAVE A LITIGATOR WHO COMPLETED MORE THAN 300 HOURS ON TWO CASES COMBINED. ONE WAS A CASE CONTRACTED IN THE QUALIFYING PERIOD.*

*THE OTHER WAS NOT CONTRACTED BUT RAN FOR MORE THAN 41 DAYS. THE LEGAL AID ORDER WAS GRANTED ON 18/03/2004 AND THEREFORE BEFORE THE QUALIFYING PERIOD.*

*CAN THE COMBINATION OF THE HOURS ON THESE TWO CASES MAKE HIM A QUALIFYING LITIGATOR*

### **Answer 125**

All of the hours on the contracted case can be used. The hours of work done during the Qualifying Period on the non-VHCC case can also be used. Please see definition of Qualifying Hours on page 39 of the IFA.

### **Question 126**

1. *"Solicitor advocates who are part of an applicant's Defence Team must apply as either a Litigator or an Advocate. This does not prevent them undertaking work as both, providing this does not upset the balance of the team." (IFA p 6 / 7)*

*Could you clarify how a solicitor advocate on the litigation list can work as an advocate? Conversely how can a solicitor advocate on the firms advocacy list conduct litigation for them?*

2. *The IFA appears to outlaw the use of self-employed litigators. What is the definition of 'self-employed'. A firm may have self-employed partners, and also use self-employed ex-partners or other consultants. Are all of these people excluded from being qualifying litigators?*
3. *The IFA states that a firm can seek advance approval from CCU to having a self-employed member of a defence team? How can that be done in advance of the tendering process??*

## **Answer 126**

1. As the dual qualification enables solicitor-advocates to conduct work ordinarily undertaken by Litigators and work undertaken by Advocates, it would not be appropriate to restrict them only to one role or the other just because they were required to apply as either Litigator or Advocate for the purposes of this tendering exercise. Those solicitor-advocates listed in an application where the applicant has used their experience as a Litigator can conduct litigation work and can also be instructed by that applicant as an Advocate. Similarly, if a solicitor-advocate is listed in an application where the applicant has used their experience as an Advocate, they can be instructed by that applicant as an Advocate and can also conduct litigation work for the applicant. In both scenarios, the applicant organisation must continue throughout the Panel Term to ensure that the balance of the team (in continuing to meet the minimum essential criteria) is maintained.
2. Please see the answer to question 81.
3. To put the section referred to above into context, this section of the IFA is describing the approach Panel Members will be required to take when considering the inclusion of a self-employed Litigator or Advocate in their Defence Team during the Panel Term. This does not refer to the tendering process. For information on how self-employed Litigators and/or Advocates may be included in an applicant's Defence Team, please see the answers to Questions 33, 71, 81 and 101(4).

**ANSWERS TO QUESTIONS RECEIVED UP TO 12 NOON ON FRIDAY 6 JULY 2007.**

**Question 127**

*Please confirm to what use the data regarding average hours worked, as requested on the capacity bid form, will be put when considering the tender applications.*

**Answer 127**

Applicants are asked to provide an indication of the hours that their bid equates to. This information will not be used at any point during the assessment of applications against the essential or desirable criteria. This is for information purposes only and will be used to assist the LSC during the Panel Term in understanding the capacity provided by successful applicants.

**Question 128**

- (a) *Is there any maximum number of independent Advocates that may be included as part of the Defence Team for the purposes of tendering?*

*The Information for Applicants suggests that the list of Defence Team members must contain a sufficient number of Advocates to ensure availability is maximised, and suggests that details of at least two Advocates should be included for each VHCC for which the Practice is bidding. We would suggest that it is unlikely that a figure of two Advocates per case would ensure availability of suitably experienced Counsel and therefore a figure of perhaps up to four Leading and Junior Counsel per case would be more appropriate. Does the LSC have any view on the number of Advocates that should be included as part of the Defence Team and, in particular, whether a list of Advocates would be deemed to be excessive after a certain point?*

- (b) *The Capacity-Price Bid Form asks for estimates of bids translated into hours for each category of VHCC.*

*Each VHCC is itself unique and therefore it is impossible to provide a realistic estimate for bids translated into the number of hours in the absence of basic information such as the volume of case paper work in relation to the cases for which tenders are being submitted.*

*Is any guidance available from the LSC as to how practitioners should address this issue? Should practitioners simply provide details of the average number of hours per VHCC that have been utilised during the Qualifying Period? If the average number of hours method is to be adopted, to what extent would the tendering process take into account the involvement of Practices with cases which could be deemed to be unusually voluminous, which would influence the overall average and what weight would the LSC propose to give these estimates within the overall tendering process?*

- (c) *Is it permissible to serve a supplemental document with the tender documents providing information about the Applicants?*

*The standard forms do not appear to provide an opportunity to provide additional information on matters such as internal procedures adopted by the Applicants which would impact on matters of interest to the LSC, such as flexibility and the ability to increase capacity.*

#### **Answer 128**

- (a) There is no maximum limit to the number of Advocates that may be included in an application. In determining the size and composition of the Defence Team, the applicant must ensure that they satisfy EC9.
- (b) The LSC is requesting applicants to provide indicative hours. This should be based on the applicant's experience and is intended to be only a 'best guess'. The LSC is not prescribing any particular method of arriving at this estimate. The LSC is asking for this information to assist it in developing its understanding of VHCCs. The LSC does not intend to use these hours in any other way. Please also see the answer to Question 127 above.
- (c) Applicants may supply any information they consider to be relevant to their application. However, we should stress that the LSC is conducting an objective tendering exercise and has requested the information it requires in order to make an assessment of any applications made. Whilst applicants may wish to provide additional information, the LSC will assess applications on the published criteria.

#### **Question 129**

*If one had a contract for one defendant that clearly qualifies and subsequently a witness is charged and a second contract is signed can that qualify as the second case providing the other criteria are met*

#### **Answer 129**

Each VHCC Individual Case Contract signed in the Qualifying Period (as opposed to each defendant represented) represents one Qualifying Case. Where an applicant has represented two defendants on a VHCC but has signed only one VHCC Individual Case Contract this counts as a single Qualifying Case (provided it was signed in the Qualifying Period). Where another case arises out of an existing VHCC and the LSC decides to contract that case it may be considered to be a second Qualifying Case provided the VHCC Individual Case Contract was signed in the Qualifying Period.

#### **Question 130**

*Counsel do not meet the qualifying period having being absent on maternity leave during some of this period. Counsel however would meet the qualifying cases otherwise.*

*Will consideration be given to Counsel in these circumstances or will she be discriminated against due to her maternity leave.*

**Answer 130**

Defence Team Members (Litigators and/or Advocates) who have been absent from work will be able to increase their actual work done on a pro rata basis.

Absence would include maternity, paternity or adoption leave, or a period of absence due to disability (as defined in the Disability Discrimination Act 1995, as amended). To illustrate this, if a fee earner had been absent for 12 months and had done 200 VHCC hours in the remaining two years, they would be able to increase this to meet 300 hours for selection purposes.

**Question 131**

*[With reference to the answer to Question 33] You refer to page six of IFA but there is nothing on page six that indicates, for example, that where a person is employed part-time by two firms that such a person is not able to be listed on two separate applications. If there is anything written elsewhere in the tender documents to support the contention you argue for in Answer 33, please could you point it out. What is the rationale for excluding part-time employees who contribute to the work product of two firms from contributing to the bids of the two firms, whether as qualifying or non-qualifying litigators? How can this not be discriminatory towards those who work in this way?*

*This begs the supplemental questions I hope you will answer: are you using these question and answers to clarify the criteria set out in your tender document or are you making up wholly new criteria as you go along? Is this a genuine tender process or a glorified public consultation while you refine your criteria in light of questions you had not properly considered in advance? In fairness to practitioners, do you think that you ought to refine your ideas a little further and put together a definitive document before proceeding with the tender process? Where applicants believe there is an apparent conflict between the IFA and the Q&As which should we ignore?*

**Answer 131**

Where a Level A or Level B Litigator is an employee of more than one applicant organisation, as in the example set out above, they would be able to count all their qualifying experience regardless of who they were working for at the time that the experience was gained.

If the Q&A have amended or clarified the IFA in any way, the Q&A should be borne in mind when preparing the tender.

### Question 132

- (i) *We have a case where the representation order is dated 21<sup>st</sup> July 2006 (July last year). The case will conclude next week, i.e. during the week commencing 9<sup>th</sup> July 2007. The trial commenced before 4<sup>th</sup> June 2007 and has now exceeded 41 days. Is this a qualifying case in these circumstances?*
- (ii) *A solicitor advocate within this firm was instructed to act as junior advocate (by another firm of solicitors) for a defendant in a case which was originally estimated to last well in excess of 41 days. On the first day of trial – following the defendant's serious ill health, the Crown agreed that the case against him should be adjourned sine die. The trial proceeded in respect of the various co-accused and lasted well in excess of 41 days. Following the need for a re-trial in respect of one of the co-accused the Crown sought to try the defendant who had now recovered sufficiently from his serious illness. The trial of these two then lasted less than 41 days. In these unusual circumstances does the case still qualify?*

### Answer 132

- (i) If the length of the trial lasted 41 days or more at the end of the Qualifying Period then this case may be used as a Qualifying Case. If the case does not fall within the definition of a Qualifying Case, but the hours worked on the case fall within the definition of Qualifying Hours, the hours worked on the case during the Qualifying Period may be claimed as part of a Litigator's/ Advocate's hours-based experience.
- (ii) This case would not be a Qualifying Case unless it was:
  - (a) a case under a VHCC Individual Case Contract (part (a) of the Qualifying Cases definition); or
  - (b) notified to the CCU as a likely VHCC in light of the trial estimate and the CCU acknowledged the case was a VHCC but decided not to contract the case (part (c) of the Qualifying Cases definition).

This case would not satisfy part (b) of the Qualifying Cases definition as the actual trial length did not exceed 40 days.

### Question 133

- (i) *If we had two cases that were contracted since 21/05/2004 but did 500 hours on those cases – could those hours count as qualifying hours for the purpose of DC5?*
- (ii) *Do pre contract hours count on a contract case?*

### **Answer 133**

- (i) Based on the information set out above, the hours worked on such cases could only count as Qualifying Hours where the work was conducted during the Qualifying Period. This applies to Qualifying Hours under all experience criteria (EC1, EC2, EC3, DC5, DC6 and DC7).
- (ii) On a VHCC, all VHCC work conducted on the case after the date the Representation Order was granted for that client (i.e. including pre-contract work) can be counted provided the work was conducted during the Qualifying Period and that it meets the definition of experience as set out in the IFA.

### **Question 134**

*Is there a limit as to the number of barristers that each particular firm can include on their Application form?*

### **Answer 134**

Please see the answers to Questions 120 and 128.

### **Question 135**

- (i) *Within to the "Information for Applicants" the hours based experience for a Level A litigator is described on page 38, and refers to hours in the ".... last three years" We cannot see a limiting factor to that three years so it would seem to be ending on the day of submission of the VHCC Panel application which can be as late as 27/7/07 resulting in the start of the three years being 27/07/04.*

*In respect of cases that do not meet the qualifying criteria because the representation order pre-dates the relevant period (21/5/04 to 4/6/07) it is stated on p 22 that "... The hours worked on the case during the qualifying period may be claimed as part of a Litigators hours-based experience."*

*This appears to extend the hours experience that can be claimed back beyond three years to 21/5/04.*

*Please confirm that work to the date of application can be included as above.*

- (ii) *In the "Information for applicants" page 22 qualifying cases include "(b) legally aided cases (not contracted as VHCCS) where the Representation Order was granted during the Qualifying Period and where the actual trial length in those cases lasted 41 days or longer;"*

*As worded this excludes any case properly prepared for a 41 day or more trial and recognised by the parties and the court as such but that was foreshortened by plea during the trial or collapse of the prosecution case. Such a case having been notified to the CCU but not acknowledged by them as being a VHCC case (the applicable criteria having been the estimated, not actual, length of trial) which proved to be one based on the applicable criteria of estimate of length of trial. In other words where it can be shown that the CCU made a mistaken assessment as to whether it was a VHCC case under the then applicable criteria.*

*As the case should have been so acknowledged then it is submitted that reasonableness and consistency dictates it should be allowable as a qualifying case and the LSC is asked to amend the criteria wording for such accordingly. Does the LSC agree so to do?*

### **Answer 135**

- (i) The definition of a Level A Litigator is set out on page 38 of the IFA. Where this refers to "the last 3 years" this should be taken to mean the dates of the Qualifying Period. Therefore, for the purposes of this tendering exercise, in determining their Level, Litigators can include hours worked on other serious crime cases between 21 May 2004 and 4 June 2007. Similarly, under part c)(ii), this should be taken to mean any 2 years in the Qualifying Period.

Please note that this only applies to the definition of a Level A Litigator for the purposes of this tendering exercise.

- (ii) The CCU's decision whether to contract a case is based on the information provided to them at that time and their decision is final. If the CCU decides not to contract a case, such a decision will have been made based on an assessment against the criteria. Such an assessment is based on the estimated trial length. If the CCU decides not to contract a case because it does not meet the criteria then that case does not satisfy part (c) of the definition of Qualifying Cases and additionally, if the case did not actually last for more than 40 days at trial, it does not satisfy part (b) either. Such a case would therefore not be a Qualifying Case for the purposes of this tendering exercise. The LSC will not be amending the criteria.

### **Question 136**

- (i) *Size of bids – it has been stated that the maximum bid will now be based on the same definition of a qualifying case for experience purposes. For the avoidance of doubt please state whether this is restricted solely to instances where cases have not completed. Are cases also covered where legal aid/contracts are in place before the qualifying period.*

(ii) *Capacity bid form.*

A. *are the estimated number of hours limited to the litigator firm or are we expected to estimate the advocate's hours. If so, how does one differentiate between cases where there are one or two advocates.*

B. *is the total number of hours intended to equate to all cases in the bid.*

(iii) *Is it permissible for the entire form to be sequentially numbered for the purpose of completing the same electronically. This will avoid the need for setting up separate documents.*

(iv) *We are having difficulty in interpreting the frequent use of the word "each" in terms of the number and price of bids. On one interpretation we know that a number of litigator forms are under the impression that there must be at least one bid at every price*

### **Answer 136**

(i) The definition of a Qualifying Case for the purposes of a bid is contained on pages 21 and 22 of the IFA. The case need not have been completed.

(ii) a. The estimate of hours as required on the Capacity-Price Bid Form should include only the litigator hours.  
b. Applicants should indicate the equivalent hours for the total bid entered at each hourly rate they are bidding at. For example, if an applicant bids for three VHCCs at each of the hourly rates, they are required to indicate the equivalent hours, based on their experience, for three VHCCs, not nine VHCCs (i.e. three multiplied by three).

(iii) The Application Form must be provided in one complete document. Where applications include a number of pages detailing the experience of Litigators and/or Advocates, these should be submitted as part of a complete Application Form. This applies to the original, the hard copies and the electronic copy of the Application Form (i.e. applicants should include all Litigator and Advocate experience pages of the Application Form in one Microsoft Word document).

(iv) Applicants should bid at each price that they wish to have their application considered at this stage. Blank bids (or nil bids) at any price will be considered to be zero bids and will not be considered at this stage of the process.

### **Question 137**

*We have a case where contracting was refused on 31/5/07 after several weeks of failure to respond following notification in early April 2007. This was a manifestly wrong decision and overuled by the head of the Complex Crime Unit on 12/6/07 and contract signed 28/6/07.*

*In these special circumstances can it be included as a qualifying case?*

### **Answer 137**

Based on the specific circumstances as set out above, this case would fall under part (a) of the definition of a Qualifying Case. In these circumstances only, the LSC will assume that if the CCU had decided to contract on 31 May 2007, the VHCC Individual Case Contract would have been signed by the applicant organisation before 4 June 2007.

### **Question 138**

*We are a firm which is eligible to bid for a maximum of (N) cases having had (X) qualifying cases within the relevant period. Whilst we can understand the guidance for the essential/desirable criteria, we find the guidance for the actual bidding process to be far from clear.*

*We understand that the 3 figures represent the Maximum hourly rate for a category one case and that the hourly rates will therefore vary depending on the category of case and the level of litigation/advocate.*

*We would be prepared to undertake work at whichever rate is eventually fixed as the base price. In the Capacity Price Bid form are we therefore able to indicate a (N) in each box? Some firms we have spoken to take the view that this is then a bid for (Nx3) cases. We take the view that it is a bid for (N) cases at whichever rate is eventually fixed once the capacity has been met.*

If we are wrong on this, then we assume that we would be limited to bidding (N) cases at one price with no bid entered for the other 2 prices. Unfortunately, this involves second guessing what other firms are likely to do.

The third alternative is to split our bid for (N) cases between the 3 rates. this doesn't seem to make sense. If we bid for 2 cases at the highest rate, one at the medium rate, and one at the lower rate then if, say, the rate was fixed at the medium rate, would this mean that we had failed because we had only bid for one case\*when the minimum\*to bid for is 3 ?

### **Answer 138**

This person's understanding of the bidding process is completely accurate. Applicant's bids at the individual hourly rates are independent of each other.

A bid, at each of the three hourly rates, of five VHCCs is not a bid for 15 VHCCs. It is a bid for five VHCCs at £145, five VHCCs at £150 and five VHCCs at £155.

The category 1 Level A/QC hourly rate will be set at one of these hourly rates. Whatever bid has been entered at this price will be the bid that is considered.

Similarly, a bid of three VHCCs at £145, one at £150; and one at £155 is not a bid for five cases. It is a qualifying bid of three cases at £145 and two non-qualifying bids (because they are less than the minimum bid size of three cases – EC7) at the other two hourly rates.

For the avoidance of doubt, applicant organisations must bid at each of the hourly rates that they wish to be considered. The bid at each hourly rate must comply with the tender rules on maximum and minimum bids. Each bid is considered independent of each other bid and are not considered to be cumulative.

### **Question 139**

*Could you please tell me why barristers are allowed to be on more than on "team" for VHCC but freelance solicitors (even with extensive experience of dealing with such cases) can only join one team and even then only if they are employees of the firm?*

### **Answer 139**

Please note that we have now amended the answers the Questions 33, 71, 81 and 101(4). Please see these amended answers.

### **Question 140**

*If an ongoing case is listed after the 4 June to start the trial and will be a trial does it qualify as a 'trial case' under the application criteria.*

### **Answer 140**

The definition of a case 'prepared to trial' is set out on page 38 of the IFA. A case that is ongoing at the end of the Qualifying Period where the trial is due to start after this date will only be deemed a case 'prepared to trial' where the applicant can satisfy this definition.

### **Question 141**

*If a litigator had a contract case where the contract was signed in 2006, and no other qualifying cases, but did over 300 hours on that one case does that make him a qualifying litigator.*

### **Answer 141**

Where a Litigator has only conducted one Qualifying Case in the Qualifying Period and therefore does not satisfy part (a) of EC1, the hours worked on that Qualifying Case in the Qualifying Period can be counted for part (b) of EC1 as Qualifying Hours. This Litigator would still need to demonstrate that the work conducted in this period satisfies the definition of experience on page 37 of the IFA.

### Question 142

- (i) *If we are relying on the "hours" route for our litigators rather than the "qualifying case" route then how and where do we indicate this at pages 5,6,20 and 21?*
- (ii) *In completing the sections relating to counsel how do we deal with answering questions where counsel or there clerk are unable to provide answers because either they dont have the answer or are unable to get the information from a third party eg date VHCC contract signed?*

### Answer 143

- (i) Applicants should demonstrate the experience and hours on the forms mentioned (in the experience section).
- (ii) The VHCC contract signed date can be obtained from the instructing Litigator organisation for that case. Advocates should request such information from that organisation. Only if such information is refused, should such a request be made to the CCU.

### Question 144

- (i) *We need to make sure we understand EC8 so that there can be no confusion, as we believe it is ambiguous. It refers to maximum capacity. If, as an example, a firm has conducted 5 qualifying cases in the qualifying period, then can it apply for 5 VHCCs at £145 , 5 at £150 and 5 at £155, or can it only apply for 5 in total (and as there is a minimum of 3 at any one price it would have to apply for them all at the same price)? If the answer is the latter, then it is perverse to exclude a firm who otherwise meets all the essential and desirable requirements on the basis that their bid is too low (see answer to Question 80c).*
- (ii) *What evidence will you be looking for to show that we can meet the capacity*
  - a) *that we apply for and*
  - b) *state that we can expand to?*
- (iii) *How will the indication of the number of hours that we give that we will spend on a case be taken into account in the bidding process and awarding of the contract?*
- (iv) *If bids from excellent applicants exceeds your capacity at say the lowest hourly rate, how will you choose between excellent applications?*

## **Answer 144**

- (i) Please see the answer to Question 11.
- (ii) Please see the answer to Question 38. This answer also applies to DC3.
- (iii) Applicants are asked to provide an indication of the hours that their bid equates to. This information will not be used at any point during the assessment of applications against the essential or desirable criteria. This is for information purposes only and will be used to assist the LSC during the Panel Term in understanding the capacity provided by successful applicants.
- (iv) If the total aggregate bids from those applicants assessed as 'excellent' against the desirable criteria and bid at the lowest hourly rate exceed the LSC forecasted capacity needs, the assessment panel will not distinguish between those applicants. All of these applicants will be invited to join the Panel at this price.

## **Question 145**

*We tabled a question (that became # 29) on 14 June. The answer was published on 29 June referring us to pages 21 and 22 of the IFA - that do not answer the question. We therefore presume that you agree with our view that this Firm's "Qualifying Cases" do include those qualifying cases (according to the criteria) for those firms or whole criminal departments of firms referred to in question 29. These qualifying cases cannot be counted by any firm other than us (as the original firms no longer do the work/or have the staff and cannot bid), and would otherwise fail to be counted at all.*

## **Answer 145**

The question referred to asked:

"Can you confirm that VHCC cases dealt with during the qualifying period by firms or criminal departments of firms acquired in total by this firm with the same litigators continuing to be employed can be counted towards the total number of qualifying cases used to quantify the size of the bid within this tender?"

The answer provided was correct, page 21 and page 22 of the IFA detail under what circumstances a firm may count cases transferred to them from other firms. For clarity however, please note the paragraph beginning "Where the Qualifying case was transferred to..." The original firm may also include these cases as Qualifying Cases provided they can satisfy the requirements as set out on pages 21 and 22 of the IFA, in particular the paragraph beginning : "Where the Qualifying Case was transferred from..."

**Question 146**

*Where there is a case which is not VHCC but within the qualifying period has 2 x trials, can the aggregated total weeks of the trials be counted towards the 41 day mark?*

**Answer 146**

Trials cannot be aggregated. Where applicants are considering if a case meets the length of trial requirement they should only include cases where any individual trial lasted 41 days or more. In the case of multiple trials (including cases involving retrials) it is not the cumulative total that should be considered but the length of any of the trials on their own.

**Question 147**

*I am a solicitor advocate and have appeared in three qualifying case as a led junior. Would I be able to apply as a litigator using these cases?*

**Answer 147**

Solicitor advocates may use their experience (experience as a Litigator or an Advocate) to support an application as either an Advocate or a Litigator.

**Question 148**

*I have approximately 50 Advocates and approximately 100 applications that will be submitted for Panel Membership. I note that you say that each application should have 1 original signature and 3 photocopies. The implication of this is that I will have to arrange for all of these people to sign over 100 declarations, it is just not practical. Are you sure we cannot provide a photocopy of this for each applicant organisation.*

*Perhaps Chambers could provide 1 original copy of the relevant pages of the application form with evidence to the Carter Team directly. I cannot see why it is necessary to have each Advocate sign 100 forms.*

**Answer 148**

Advocates must sign each application that they are included in.

**Question 149**

*Can you confirm whether pre contract work carried out on what subsequently becomes a contracted case, can be included in qualifying hours.*

**Answer 149**

Please see the answer to Question 133(ii).

### **Question 150**

*If we have done 10 qualifying cases in the qualifying period and our capacity bid was 6 cases with a willingness to undertake 12 cases; would we receive 7 marks under desirable criteria DC1 and 3 marks under DC3?*

### **Answer 150**

Any application that meets the requirements of DC1 (i.e more than half the number of Qualifying Cases conducted in the Qualifying Period) will score seven marks under this criterion. Based on the information set out above, if the applicant bids six VHCCs and they have undertaken ten Qualifying Cases in the Qualifying Period then because six is greater than five (half of ten), this applicant should answer 'Yes' to the questions asked under this criterion (for the appropriate hourly rate at which they are bidding).

Any application that demonstrates a willingness to increase their capacity by 100% in the Panel Term will score three marks under DC3. Based on the information set out above, if an applicant is willing to expand their capacity to 12 VHCCs if required during the Panel Term, this is a 100% increase in the six VHCCs bid. Therefore, the applicant should answer 'Yes' to the questions asked under this criterion (for the appropriate hourly rate at which they are bidding).

### **Question 151**

*Can you please confirm that to evidence the experience as required at EC1, it is sufficient to produce the VHCC5/ payment advices which following an audit of the papers, specifies the hours allowed for each grade of fee earner?*

### **Answer 151**

Whilst it is sufficient for Advocates to provide copies of the VHCC Reconciliation Sheets to evidence their hours; for Litigators, the information on these documents may not necessarily evidence hours worked by a specific Litigator. For example, the Reconciliation Sheets would show the total hours worked by all of the Level B Litigators on that VHCC in that stage. It would not distinguish between each Level B Litigator. Where the hours detailed only apply to one specific Litigator the applicant would need to provide further information/evidence to substantiate this. VHCC5s (i.e. the signed payment form that accompanies the Reconciliation Sheet) do not detail the hours worked.

### **Question 152**

*(i) I understand from the IFA that our application needs to include as a minimum figure, a sufficient number of Advocates to cover our capacity bid, so 2-3 Advocates per case. Can you please confirm if there is a maximum number of Advocates we can include?*

- (ii) *On the application in relation to each Litigator/Advocate, it requires us to stipulate the hours worked on each case during the Qualifying Period and it also states, "For all cases please describe the nature of your experience..." However the selection criteria clearly states that the experience must be demonstrated by experience of 2/3 qualifying cases or 300/500 qualifying hours. We would rather rely on hours conducted, which we feel is more objective, therefore please confirm if it is acceptable on the application form in relation to each Litigator/Advocate to just stipulate the number of qualifying hours, rather than having to also describe the nature of work undertaken on each case by each person.*

### **Answer 152**

- (i) Please see the answer to Question 128(a).
- (ii) Applicants are required to describe the nature of their experience whether they are applying under part (a) Qualifying Cases or part (b) Qualifying Hours. Please note the definition of experience on page 37 of the IFA.

### **Question 153**

*Please confirm whether the 6minute units of work claimed for letters and telephone calls can be used to calculate qualifying hours for litigators*

### **Answer 153**

Please note the answer to Question 46.

### **Question 154**

- (i) *In light of previous answer 38 "Applicants are not required to provide evidence of the Qualifying Cases they are using to calculate the size of bid. Applicants are only asked to state the number of Qualifying Cases" and the fact that non - VHCC's can now be viewed as qualifying cases, what safeguards are in place to deal with inaccurate applications? Any such applications will lead to an incorrect market capacity threshold being set.*
- (ii) *Certain Chambers have contacted me with concern over the exclusion criteria form. As it stands at the moment, any criminal conviction of any kind would have to be declared and would subsequently lead to exclusion for all from the tendering process. It appears that some of the bar ( and no doubt some litigators) may have convictions for minor motoring matters or minor indiscretions committed in their youth. These of course will have been disclosed to the relevant professional bodies and are not deemed by them to be an issue as regards fitness to practice. What is your view on this? Surely it would make sense that if fitness to practice is not in doubt and that in any event the convictions would not be disclosable to you through the Rehabilitation of Offenders Act, then they need not be disclosed and/or should not cause exclusion from the tender. Some urgent guidance please.*

- (iii) *My understanding is that Case Managers would normally be expected to be A grade but could in certain circumstances be B grade particularly if they are the principal fee earner on the case. Apart from page 37 of the IFA and the EC and DC selection criteria, are there any other conditions required for the use of a B grade Case Manager?*

**Answer 154**

- (i) Applicants are required to sign the Application Form confirming the accuracy of the information they provide. In the draft VHCC Panel Member Contract and Panel Advocate Contract the provision of inaccurate or false information will be considered a breach of contract. The consequence of such a breach is contract termination.
- (ii) Under question five on the Exclusion Criteria Form, 'a criminal offence' excludes minor motoring offences. For the avoidance of doubt, the Rehabilitation of Offenders Act 1974 does apply.
- (iii) There are additional requirements for Case Managers who manage fraud VHCCs. These are set out at clause 15.4 of the draft VHCC Panel Member Contract.

**Question 155**

- (i) *Would you disallow hours claimed as preparation unless it is clear exactly what 'experience' is being undertaken. (Obviously travel and waiting are excluded).*
- (ii) *Are you content that the billing record obviously relates to 'experience' within the means of the definition or do you need more?*
- (iii) *If you need more is a general narrative account sufficient.*
- (iv) *If (iii) is not sufficient do you want to see the actual attendance notes and file. It is difficult to see what other 'evidence' could be produced.*

**Answer 155**

- (i) Experience is defined on page 37 of the IFA. Where a firm puts forward experience without any clarification of the nature of the experience the LSC will not be able to confirm that the experience meets the definition. This will lead the LSC to assume that this experience does not meet this definition.
- (ii) Experience may be demonstrated by the use of, for example, a work log, payment record or other records that can substantiate this experience.
- (iii) Applications should be complete enough to validate any claim and may, if the applicant considers it appropriate, include a description of the work undertaken.
- (iv) It is not necessary to provide the attendance notes and file.

## Question 156

[This question contained the details of a number of cases, which we are not in a position to comment on specifically. The following questions were then raised based on this information:]

*We are encountering difficulty in seeing how we can meet the Essential Criteria under the "EXPERIENCE" head.*

- *Cases A,B,C,and D predate the Qualifying period.*
- *Courts Martial do not count.*
- *Cases F and G did not last quite as long as 40 weeks.*
- *VHCC contracts were neither signed or proposed.*

*Each of these cases involve dealing with copious prosecution and defence material. They demand great expertise in mastering highly technical scientific material. Usually there is a minimum of 10 experts involved.*

*Each case has had a QC and at least one junior. Two cases had two juniors.*

*... as far as we can see we will not meet the Essential Criteria because we just fall outside time brackets and periods.*

- (i) Are we right or are we missing something?*
- (ii) If we do not get on the VHCC panel now, can we do so in the future?*
- (iii) If so , when and how?*

## Answer 156

- (i) Whilst these cases would not satisfy the definition of Qualifying Cases in the IFA, the work conducted on these cases in the Qualifying Period could be used under the second limb of the experience criteria if they meet the definition of Qualifying Hours. Applicants need only meet (a) or (b) of the experience criteria (i.e. either Qualifying Cases or Qualifying Hours).
- (ii) If an applicant is unsuccessful in this tendering exercise, they will not be in a position to join the Panel during the Panel Term (18 months from the Panel Start Date).
- (iii) The criteria for the second panel will be issued at the appropriate time. Our Final Response to Consultation issued on 27 April 2007 states that the LSC will in future need to consider how to use experience on non-VHCCs to allow new entrants into the market.

## Question 157

1. *In question DC3, up to 3 marks are available, if the applicant is willing to increase its capacity. According to the LSC to Annex A, the Assessment Table – the LSC will award marks according to the answer provided. Could you please confirm that this is the case, in other words that the LSC will not second guess providers ability to expand?*
2. *The capacity price bid form asks applicants to translate (as an estimate) the bid in terms of numbers of hours. Will the LSC use this information to form subjective judgements about the bid? We would suggest that to do so would be inappropriate, given that the whole VHCC regime was invented as these case fell outside the realms of bulk purchasing/standardisation.*
3. *I am an employed solicitor advocate and can meet criteria EC1b by two cases. In one case I have 300 hours as litigator only. In the other case I have 300 hours as advocate only. Clearly in relation to each of these cases I meet EC1b standards?*
  - A *Can I combine the two cases to show that I meet DC5b?*
  - B *Notwithstanding my position as employed solicitor advocate I am briefed by some local firms in my area in competition with the local Bar. Can these firms put my name down on their list of advocates even though I am employed by my own firm?*
4. *Question EC10 asks whether all self employed advocates listed as key defence members comply with the financial management requirements of their Regulatory Authority. How can an applicant solicitor be expected to answer this question on behalf of barristers regulated by the Bar Council/BSB? Wouldn't a separate declaration signed by any barristers included on any application be sufficient?*
5. *I am an employed Barrister and as such have extensive litigation experience and have been treated by the NTT as a Grade B fee earner. I also meet the qualifying criteria in terms of DC5b for litigation work.*
  - A *Can my firm put me forward as a litigator*
  - B *If so, would I be prevented from acting as a litigator.*
  - C *How should my firm complete page 2 of the application form in relation to my details*
6. *Does pre contract work count on a case that became contracted (as long as it is of course inside the qualifying period)?*
- 7A *Does applicant at any stage in the App Form have to actually prove they are grade A/B by ref to hours?*

- 7B *If so - Where vhcc 5 already shows fee earner to be agreed as grade A then does that applicant still have to show grade A hours re litigators definition*
8. *In CCU contracted cases the issue of work as advocate and litigator is blurred where the Sol-Adv also takes most of the instructions (normally a litigator activity) as well preparing for advocacy and conducting advocacy. Therefore may solicitor-advocates in showing qualifying hours use both litigator and advocate forms. Surely it is more preferable for individual sols-advocates to record both their levels of experience as advocates and litigators as long as the combined total hours meet EC1 and EC2 and DC5 and 6*
9. *Re Desirable Criteria – I can show in excess of 500 hours on just one case. I could equally show a total of 2000 qualifying hours from other cases. Should I do this? Is there any chance that my application or that of my firm will be prejudiced if I showed no more than meeting DC5/6 criteria.*
10. *“Balance” must there be a balance in each category - as between*  
*a A’s with experience of EC/DC and other As without*  
*b Bs , with experience of EC/DC and other Bs without*  
*c QCs with experience of EC/DC, and other QCs without*  
*d Non QC Leaders with experience of EC/DC and other Non QC Leaders without*  
*e Junior alone experience of EC/DC, and other such without*
11. *Do you require evidence of contracts of employment of litigators to accompany the application form?*
12. *Demonstrating evidence of EC1b/DC/5b: Cases will have straddled periods either side of the qualifying period. Is it acceptable to just extract the worksheet records re work done in qualifying period or would you prefer the whole work sheet for such cases where some work will inevitably have been done outside qualifying period*
- 13 *There seems to be an Apparent inconsistency in the guidance re solicitor advocates. Page 7 of the IFA indicates that “Solicitor advocates who are part of a Defence team must apply as either a Litigator or an Advocate” Yet the application form at page 2 makes it mandatory for solicitor advocates to list both their Advocate and Litigator level. So whilst a solicitor advocate could tick Lit Level A and Leading Advocate etc – how does the Applicant organization indicate (as per IFA requirement at page 7) whether the application is as litigator or advocate.*
- 14 *I am an Employed solicitor advocate (employed by Firm A) have also been regularly briefed (incl VHCC cases) as Solicitor Advocate by Firm B.*
- (i) *Clearly I should be able to be included on firm A’s application and tick page 2 on App Form as Grade A, Leading, Led and Junior alone boxes.*

(ii) *Firm B have indicated that they would like me to go on their Key team as an advocate and a litigator (as I often take instructions on their cases) and case manager. However in the light of Q33 and 71 they now feel unsure of the CCU position. Surely to bar me from being on their panel as an advocate would be anti competitive/ discriminatory as the bar can be on many different firm's advocate panels. Can you initially confirm that advocates employed by firms can be advocates/case managers for other firms as well.*

15 *Self employed litigators – We have a self employed litigator who has done VHCC type work for us on an exclusive basis and would continue to do so. He does undertake non vhcc work and police station work on occasions for other firms and would like to continue to do so.*

A *Does the latter fact preclude him from being included as a litigator in our application? Will he be able to continue to undertake non vhcc work for other firms?*

B *Does the mere fact of litigators being self employed in anyway prejudice the applications of those firms who use them?*

16 *All else being equal, are firms who can only bid for 4 cases handicapped in the tender process against those who can bid for more than 4?*

### **Answer 157**

1. The assesment is an objective exercise based upon the answers and information provided by applicants.
2. The indicative hours provided by applicants will not be used for assessment purposes.
3. A) In order to meet the experience criteria, individuals may use any experience, as long as it meets the definition provided in the IFA. It is permissible for a solicitor advocate to combine both work types to demonstrate experience.  
B) A solicitor advocate may be listed as an Advocate on multiple applications. Solicitor advocates nominated as Advocates will be added to the VHCC Advocate List and, subject to clause 1.5 of Annex 9 of the VHCC Panel Member Contract, Panel Members may instruct any Advocate on that list.
4. Applicant teams must ensure that all their team members comply with the relevant regulatory authority. All Advocate members of the team attest to this when signing the application form.
5. A) The definition of a Litigator is contained in the IFA at page 38.

- B) Applicants are only required to ensure that half of their team of Level A and Level B Litigators meet the experience requirements.
  - C) Page two of the application form should be completed by indicating all the relevant roles.
6. Yes.
7. A) Accuracy of applications are attested to by the signatories to the application. Grading of fee earners will be tested on individual cases as and when they are contracted. If an applicant is subsequently (to the application) found to have obtained panel membership by providing false information the Contract will be terminated.
- B) Please note 7 (A) and 5 (A) above
8. Solicitor advocates must be listed as either a Litigator or an Advocate on any one application. They should not be listed as both. Please also note 3(A) above.
9. Applications will be assessed objectively in line with the application form's questions (which test the criteria) and the answers and information provided by applicants.
10. Balance - The requirements do not require any balance other than those detailed in the IFA and on the application form - i.e. half of the Level A and Level B Litigators (with at least one Level A) must meet the experience requirements and half the Advocates nominated in a leading role must meet the experience requirements.
11. There is no requirement for applicants to provide contracts of employment.
12. You are only required to evidence the experience you claim in support of your application.
13. This will be clarified when applicants complete the experience sections of the application form – i.e. as a Litigator or as an Advocate.
14. (i) That is correct
- (ii) Please note that we have amended the answers to Questions 33, 71, 81 and 101(4) as previously published. There is no limit to the number of applications an Advocate (including a solicitor-advocate) may be named in.
15. A) The CCU has the power to approve the use of non-team members providing that they do not disturb the qualifying (balance) of the applicants team.

- B) The applications are assessed via an objective process using the application answers and information provided by applicants.
16. where applicants can bid only for a maximum of 4 cases they will not be in an inferior tendering position to an applicant who may bid in excess of 4 cases (see the Assessment Table at Annex A to the IFA).

### **Question 158**

Is it permitted for Solicitor Advocates to show experience by combining DC5b/DC6b? This same issue would apply to employed barristers who may have done some work on say, Case A as just litigators and on case B as Advocates. I am aware that CCU is allowing Solicitor Advocates to elect whether to be designated as Litigators or Advocates but undertake both. However the forms contained in the application pack force Solicitor Advocates to choose either the Litigator form or the Advocate form. Surely they can use both in order to show the relevant experience for both EC and DC as otherwise they fall between two stools and it will be inconsistent with allowing them to elect between being nominated as Litigators/Advocates.

If combining the above is the correct way forward, then should Solicitor Advocates (or employed Barristers who perform litigation) indicate in their applications that they are combining DC5b and DC6b?

### **Answer 158**

Please see the answer to part 8 of Question 157 above. Solicitor advocates are able to demonstrate on either a Litigator experience form or an Advocate experience form the work they are using as part of their application as experience. For the avoidance of doubt, an applicant cannot use the experience of a solicitor advocate to meet both EC1 and EC2 or DC5 and DC6.

### **Question 159**

*This has to do with advocates providing evidence that they have undertaken the requisite number of Qualifying Hours in the Qualifying Period, and the difficulties of providing evidence in the way of time logs / attendance notes etc, especially when in graduated fee cases there will not have been time logs. A colleague has said that in a case where a barrister had had difficulty in gathering together all of this historic material, the LSC had given a concession that it would be acceptable for the barrister to supply a "statement of truth" that these hours had been worked.*

### **Answer 159**

In the answer to question 10 we have said that a statement, including a statement of truth will be accepted where a Litigator has changed firms and the previous firm has refused to provide evidence of hours worked.

For cases lasting 41 days or more, it should be possible for Advocates to evidence the essential experience level of at least 300 hours. However, for Graduated Fee cases only, where the Advocate wishes to evidence hours in addition to the trial and has no other means of doing so, we will accept a statement, including a statement of truth, that the additional hours have been worked.

### **Question 160**

*... We wish to know in simple terms firstly, the Commissions view on how the ethnic diversity of VHCC contract holders in Wales will be protected to avoid inadvertent discrimination based on ethnicity of practioners and their client base.*

*Secondly, what systems are in place to monitor diversity compliance.*

### **Answer 160**

The LSC undertook a full consultation as part of the best value tendering process for VHCCs. This included a Regulatory Impact Assessment. These documents may be accessed on the LSC's website.

### **Question 161**

*...the "sole control" limb [b] of the definition of Experience in the IFA only approximates to what one imagines the LSC wishes to satisfy itself of, and may be difficult for led juniors to fulfil if taken literally.*

### **Answer 161**

Please see the answer to Question 60.