


CONTRACT AMENDMENT NOTICE

Contract Amendment Notice number:	2 (Two)
Date of Contract Amendment Notice:	12 December 2008
Effective date (date amendment comes into effect):	15 December 2008
Details of amendments to the Contract Addendum to Very High Cost (Crime) Panel Contract for Panel Members <ul style="list-style-type: none">▪ Annex 9 'Instructing Advocates' to be replaced with new Annex 9 'Instructing Advocates – Amended' attached.	
Signed:	 David Keegan Director of High Cost Cases Group

ANNEX 9

INSTRUCTING ADVOCATES - AMENDED

1. General

- 1.1 VHCC Work can only be carried out by:
- (a) Bid Team members and other employees of the Panel Member (which may include employed Advocates); and/or
 - (b) Panel Advocates; and/or
 - (c) Panel B Advocates; and/or
 - (d) Non-Panel Advocates where the CCU has given permission under clause 1.5 of this Annex 9.

Other than this, anyone else who is self-employed cannot conduct VHCC Work without the CCU's express prior written permission.

- 1.4 Advocates who are solicitor-advocates must have a current Practising Certificate. Advocates who are Barristers must be registered with The Bar Council of England and Wales as practising barristers. You are obliged to inform us whenever a solicitor-advocate Bid Team member's Practising Certificate is revoked or whenever you become aware that a barrister Defence Team member is 'disbarred'.
- 1.5 Responsibility for identifying and instructing Advocates lies with the Panel Member. The Case Manager is responsible for managing an Advocate's contribution to the work of the Defence Team. When instructing Advocates:
- (a) the Panel Member must use all reasonable endeavours to instruct firstly a Panel Advocate and if none available a Panel B Advocate. Contact details for all Panel Advocates will be provided on the VHCC Advocate List which is published on the LSC website at www.legalservices.gov.uk.
 - (b) If the Panel Member is unable to instruct a Panel Advocate (including a Panel B advocate) with the appropriate level of skill, expertise, capacity and ability to conduct the case in accordance with a Panel Advocate's Contract you may instruct a Non-Panel Advocate, provided that the CCU is informed.
- 1.5A When informing CCU of the instruction of a Non-Panel Advocate under paragraph 1.5(b) above, the Panel Member must confirm that the chosen Non-Panel Advocate has the level of skill, expertise and capacity required for the particular case, in accordance with the terms of this Contract.
- 1.5B When instructing a Non-Panel Advocate under clause 1.5(b) above, the Panel Member must:
- (a) ensure that any instructions to the Non-Panel Advocate comply with the requirements set out in Annex 4; and
 - (b) ensure that the Non-Panel Advocate is aware of the terms of this contract; and

(c) use all reasonable endeavours to ensure that the Non-Panel Advocate complies with the requirements placed on Advocates and Defence Team members in this Contract.

- 1.5C You cannot instruct a Panel Advocate as a Non-Panel Advocate.
- 1.6 The courts will remain responsible for decisions on the number and level of Advocate(s) that can be appointed to act on any VHCC. This will be formalised in the Representation Order for that client. Both you and the CCU must operate within these decisions. The CCU does not have any discretion to go behind the Representation Order and therefore can only pay Advocates at the appropriate rates for their level as specified on that Representation Order at the date the Advocate conducted the work.
- 1.7 Alongside the general requirement to instruct Advocates with the necessary experience and expertise, the Panel Member must also take account of the need, as far as is reasonably possible, to ensure that the Advocate(s) selected will be available throughout the VHCC.
- 1.8 The Panel Member should conduct regular reviews of the work conducted by the instructed Advocate(s), to ensure they are providing the required quality of advice and level of service. Where issues arise, you are expected to address these with the Advocate(s), and, between you, identify why these issues have arisen and, where appropriate, agree what must be done to prevent these issues arising in the future.

2. Trial Stage

- 2.1 Advocates must carry out all reasonable and necessary work to represent the lay client properly. They will be paid daily advocacy rates during the trial. This includes two hours' preparation during a full court day and one hour during a half-day (see Annex 7 'Rates of pay' for information on full and half days). It is acknowledged that such time will regularly be expended during the trial in consulting with the lay client, instructing solicitors, prosecution counsel, co-defending counsel and others. All such preparation will be deemed to have taken place between 9.00 am and 5.00 pm (the court day).
- 2.2 Any preparation for the trial stage that can be identified before the start of the trial or during the trial can and should be negotiated and agreed in advance with the Contract Manager. Preparation that is necessary during the course of the trial should be undertaken either during the court day or after the court day. Work that might be undertaken during the court day includes (this list is not exhaustive):
- the reading of served material requiring immediate attention;
 - conferences with the client;
 - meetings with instructing solicitors; and
 - meetings with the prosecution.
- 2.3 Work that might be undertaken after the court day might include preparation which requires drafting or research, or is likely to require a long period of uninterrupted preparation or the use of a computer.
- 2.4 Advocates should prepare work logs for all preparation undertaken during the trial, including preparation undertaken during the course of the court day. The

CCU agrees that all work properly and reasonably undertaken by the Advocate and accounted for in their work log will be paid at the appropriate rate, subject to its being satisfied that such work could not have been included when planning their trial stage Task List.

- 2.5 The specific agreement of the Contract Manager to any significant item of additional work may be sought at any time throughout the trial stage. The Case Manager (or Leading Advocate, if the two are not the same) should contact the Contract Manager every four weeks during the trial to discuss changes to the VHCC arising from the trial and to highlight additional work being undertaken.

3. Substitute Advocates

- 3.1 Where it is necessary for a Substitute Advocate to undertake any VHCC Work, that Advocate will be treated as a subcontractor.
- 3.2 Claims for any work undertaken by a Substitute Advocate must be submitted, by separate invoice, with the instructed Advocate's claim for work as part of the Defence Team's Audit Bundle (see Annex 4). A template invoice for this purpose will be provided by the CCU. A claim in any other format will not be considered by the CCU and will not be paid.
- 3.3 The CCU will make a total payment to the instructed Panel Advocate, inclusive of VAT (assuming s/he is VAT registered).
- 3.4 The instructed Advocate will be liable to account to HMRC for that VAT, but may deduct any VAT which is paid by him/her to a Substitute Advocate, as input tax.
- 3.5 Appropriate records must be kept for VAT inspection, including copies of VAT invoices issued by the instructed Advocate and VAT invoices issued to the instructed Advocate by any Substitute Advocate.

4. Return of Brief

- 4.1 Where the Contract Manager decides it is reasonable for an Advocate to return a brief all reasonable costs will be paid upon production of an Audit Bundle. Please refer to Annex 4 for further information on auditing requirements.
- 4.2 A reasonable return of brief might include:
- where the Advocate withdraws due to professional embarrassment;
 - where the trial dates of the VHCC 'clash' with a case upon which the Advocate was instructed prior to the instruction on the VHCC;
 - where the Advocate is sacked by the client but not as a result of improper behaviour on the part of the Advocate; or
 - where the Advocate succumbs to a serious illness. This should be substantiated wherever possible or reasonable with a doctor's note or similar.
- 4.3 If the CCU concludes that it was unreasonable for an Advocate to return a brief, costs may be withheld or, if already paid, recouped.

4.4 An unreasonable return of brief might include:

- where the trial dates of a new case 'clash' with a VHCC upon which the Advocate was instructed prior to the instruction on the new case. To do so might be unreasonable as the Advocate should return the brief of the case that was accepted last;
- where the Advocate is sacked by the client as a result of improper behaviour and this can be proven - for example, failure to turn up to court without reasonable justification;
- where the Advocate takes a planned sabbatical (i.e. the Advocate has planned to take a length of time off knowing they are holding the brief for a VHCC);
- where the Advocate does not accept the category assigned to the case and returns the brief as a result; or
- where the Advocate does not accept the hours agreed by the Contract Manager (or CCU) and returns the brief as a result.

4.5 The CCU will consider each return of brief on a case-by-case basis in line with the CCU and Bar Council guidelines.

4.6 If the CCU decides that an Advocate has unreasonably returned a brief, you will be deemed to be in breach of this Contract if that Advocate is employed by the Panel Member (or is a partner in the Panel Member firm). Please refer to Annex 13 on breaches of contract for further details. Where the Advocate is a Panel Advocate, the Panel Advocate only will be deemed to be in breach of his/her contract.