

## Virtual Court Frequently Asked Questions

### Question 1. What is the Virtual Court?

The Office of Criminal Justice Reform (OCJR) will be running an extended Virtual Court pilot for 12 months, starting in 2009. The pilot is a cross agency project led by the OCJR. The aim of the Virtual Court is to deliver a way of speeding up first hearings by means of video links and an electronic document sharing system with the overall objective of making the criminal justice system more efficient. Defendants will appear at the court across a video link from the police station hopefully within 3 hours of being charged at that police station. This will be their first appearance in the magistrates' court. If the case is to be adjourned then the matter will be referred back to their 'home' court. If the case is concluded at the Virtual Court then there will be only one hearing.

The Virtual Court is being piloted in South East London and North Kent.

### Question 2. What is the LSC's Role?

The Virtual Court pilot involves most of the other criminal justice agencies in its implementation and delivery. The LSC is responsible for ensuring that the defendant's rights to justice are met by paying for representation by a defence solicitor at the Virtual Court hearing.

### Question 3. How is the LSC going to achieve this?

In order to ensure that the Virtual Court process is as efficient as possible, the Legal Services Commission (LSC) has proposed that representation be provided through advocacy assistance (a non-means tested form of legal aid) and paid as a Virtual Court Fixed Fee. This form of legal aid is granted by the defence solicitor and will cover a single hearing at the Virtual Court.

Where the case is disposed of at the first hearing, the solicitor will claim the Virtual Court Fixed Fee.

Where the case is adjourned to a second hearing, the defendant will then apply for a Representation Order in the normal manner. The application will have to meet the Interests of Justice and pass the means test. If the application is successful then the Virtual Court fee will be rolled in to the final Standard Fee claimed. If the application is not successful or no application is made then the Virtual Court Fixed Fee will be claimed.

Following an LSC consultation the necessary amendments to the Unified Contract and Crime Specification to support the Virtual Court pilot goes live in 2009 were made. After receiving responses to the consultation the LSC agreed that where the Virtual Court sits within business hours (9.30 to 17.30, Monday to Friday), the Virtual Court Fixed Fee will be paid at £200 + VAT in London and £150+ VAT elsewhere and where the Virtual Court sits outside these hours the fee will be paid at £240 + VAT in London and £180+ VAT elsewhere. Where the Virtual

**Court falls within a designated area, as defined in the Unified Contract: Crime Specification, the fee includes travel and waiting. Disbursements can be claimed in addition to the fee.**

**Where the Virtual Court falls outside a designated area the fee includes travel and waiting. Disbursements can be claimed in addition to the fee. However if in a non designated area the case is adjourned, as noted above, and the standard fee becomes payable then travel and waiting can be added when calculating the standard fee.**

Question 4. Are these fees fair?

**The LSC has been in discussion with the Law Society and other representative bodies over the value of the fee. The representative bodies have concerns over the level of the fee but have said that it is up to individual firms to decide whether in their particular circumstance they consider the fee economic.**

**The LSC is committed to a continuing dialogue over the value of the fee, but considers that the fee offered is fair because legal aid is provided on an advocacy assistance basis with no means test and a low merits threshold and all defendants appearing before the Virtual Court will be entitled to receive it. This means that solicitors will be able to access funding for clients who would not normally receive it. This represents an additional income stream available to solicitors**

**However we will continue to discuss the fee with all parties to ensure that the sum paid reasonably remunerates the work done at an acceptable price to the taxpayer.**

Question 5. Is the approach being consulted on likely to be the national model, should the pilot be rolled out in the future?

**No. The proposed amendments will support the pilot period only. The pilot will be fully evaluated and any future legal aid structures will be based on the experience and evaluation of the pilot. The LSC will consider the appropriate operating model if any national proposals are put forward.**

Question 6. What is the Virtual Court Duty Solicitor Scheme?

**The LSC is concerned to ensure that the defendant has access a defence solicitor throughout the Virtual Court process. It may be possible, for a number of reasons that a defendant may be without a solicitor when they are due to appear before the Virtual Court. When this occurs, the defendant will be offered a choice of instructing the Court Duty Solicitor (CDS), based at Camberwell magistrates' court, who will provide representation over the video link or the Virtual Court Duty Solicitor (VCDS), who will be present with the defendant at the Virtual Court hearing.**

**The VCDS Scheme will be made up of local solicitor firms who have volunteered to participate in the scheme. These firms commit to**

**providing a solicitor to represent defendants when requested by the Defence Solicitor Call Centre.**

**Payment for the VCDS will be made on the same basis as representation before the Virtual court by an own solicitor.**

Question 7. How can firms volunteer to take part in the VCDS?

**The LSC has written or will write to all firms who have an office in the borough or area where there is, or will be, a participating police station inviting them to express an interest in participating in the scheme. The structure of the VCDS Scheme is published on the LSC website at [www.legalservices.gov.uk](http://www.legalservices.gov.uk).**

Question 8 If an accredited representative attends the police station and the defendant is charged and it is proposed to proceed by way of Virtual Court hearing and the accredited representative has no right of audience would the defendant deemed to be unrepresented such that the VCDS would be called upon?

**Yes. However, it would be possible for the accredited representative to advise their firm that the defendant was going to appear before the Virtual Court. That firm could then deploy a solicitor to represent the client at the hearing and claim the Virtual Court attendance fee or the standard fee where a Representation Order is subsequently issued. The VCDS will only be offered to the defendant where they do not have any legal representation after they have been charged.**

Question 9: In the situation in 1 above if the defendant was an existing client of the firm who instructed the accredited representative and the case was not concluded at the Virtual Court hearing what would be the situation regarding the future representation of that defendant? For example would the VCDS be entitled to apply for a representation order?

**Depends on the client's wishes and the advice given by the VCDS. The VCDS, like any court duty solicitor, will have a duty to advise the client that they are not under any obligation to instruct him if they would prefer to be represented by another firm. The VCDS may choose to only represent the client at the Virtual Court and may refer the defendant back to the firm who had advised them at the police station. Alternatively, the client may wish to continue to instruct the VCDS to represent him or her at subsequent hearings, dependent up the successful application for a Representation Order.**

Question 10: If the defendant is represented at the police station by his solicitor and the matter is to be dealt with by Virtual Court hearing will that solicitor be expected to conduct the hearing and is so would he be paid for so doing? If the answer to the question is 'yes' and the solicitor is attending a police station in the borough other than the borough in which his office is situated then what would be the consequence?

**Yes. There would be no consequences, as the client would be instructing their solicitor on an own client basis. The same applies to any solicitor who does not have an office inside the participating borough. Where their client specifically instructs them to represent them at one of the participating police stations, they will be eligible to claim the Virtual Court attendance fee in accordance with the amended contract.**

Question 11: Does the pilot apply to any level of offence charged whatever its seriousness?

**Yes. Youths and cases involving more than 2 defendants will not be eligible for the Virtual Court pilot but it is anticipated that all other charges will be, subject to any criteria set as part of the pilot. Consideration is being given to the position of clients with mental health issues. It is anticipated that this will include Indictable Only offences.**

Question 12: When a provider accepts a call to represent at the Virtual Court when must they attend the relevant police station?

**The provider must attend the relevant police station at least 30 minutes before the notified Virtual Court Hearing time. They do not have to attend immediately they accept the call.**

Question 13: What happens if the provider attends the relevant police station at the correct time to represent at the Virtual Court hearing and the defendant fails to appear?

**In these circumstances the Virtual Court fee can be claimed. This is subject too a completed CDS3 is endorsed by either the virtual court clerk or the Designated Detention Officer being obtained and no other virtual court matter being dealt with at the same visit. The fee claimable will be calculated from the time that the scheduled hearing should have taken place.**

Question 14: What LSC forms have to be completed and signed when attending the Virtual Court?

**All that is required is for the solicitor to complete and sign the CDS3, the client's signature is not required. The CDS3 should be annotated to show that it is in relation to a Virtual Court hearing and remain on the case file.**

Question 15: Can a provider when attending the Virtual Court either as the VCDS or own solicitor represent from the court rather than from the police station?

**Yes. Whilst it is anticipated that the solicitor will in most cases wish to be with their client at the police station they can be present at the court while their client uses the video link from the police station. The solicitor would need to ensure that their client knows and agrees that they will not be present with them at the police station. The solicitor would also need to be at the court at least 30 minutes before the hearing having**

**confirmed with the court that at that time the video link to the police station is available so they can take instruction from their client.**

Question 16: What happens with Legal Aid Applications?

**As described in Question 3 above representation at the Virtual Court is provided through advocacy assistance, a non-means tested form of legal aid. No Legal Aid Application is necessary and the grant of legal aid has no impact on the operation of the Virtual Court. Where the case is disposed of at the Virtual Court hearing the solicitor will claim the Virtual Court Fee.**

**If the case is adjourned to a second hearing the defendant will have to apply for a representation order in the normal way and the application will have to meet the Interests of Justice and financial eligibility criteria. In these cases Legal Aid Applications will have to be completed and signed by the defendant and presented to the court for assessment in the usual manner.**

**Where the solicitor and the defendant are located together at the police station, (most cases), the completion and signing of the forms will be the fairly straight forward matter of the defendant giving the solicitor details, the client signing the form and the form being sent to the court.**

**There will be instances where the client is represented remotely by their solicitor from the Magistrates Court. Under these circumstances the client cannot sign the form on the day, which in turn cannot be processed without a signature. For the purposes of the pilot it is expected that the second hearing will be scheduled between 48 hours and two weeks after the Virtual Court hearing. This should be sufficient time to complete the application forms and submit them to the relevant magistrates court for processing before the second hearing.**

**However on occasions where this has not been possible the current arrangements that are in place to ensure remuneration for the solicitor at the second hearing will apply. It is anticipated that under these circumstances the applications will be completed and submitted on the day of the second hearing.**

**The provider will be entitled to claim the early cover fee (£75+vat) if the application for the rep order is refused and they have provided representation at the second hearing. They keep this in addition to the Virtual Court fixed fee of £200 / £240 (London pilot sites) or £150 (Kent pilot). All figures are exclusive of VAT.**

**If the client fails to show then the solicitor will retain the Virtual Court Fee.**

**A number of options have been considered by the LSC, the Local Implementation Teams and Solicitors to resolve the issue of getting the forms completed, signed and to the court before the second hearing but all have had to be discounted.**

**The possibility of the courts accepting an electronic signature using the collaborative space to effect the transfer of the papers from the court to the police station and onwards to the court that would hold the second hearing was considered but was ruled out by the professions representatives as their professional rules forbid them from putting client sensitive and confidential information into the hands of third parties.**

**The possibility of the defendant signing a statement to the effect that the information he had given his solicitor was true was considered but ruled out as the defendant had no way of knowing what information had been put on their form.**

**The LSC has agreed with the OCJR and the LIT that the volume of cases where representation by the solicitor is provided remotely and a second hearing is required will be monitored during the course of the pilot. Should the actual occurrence of such circumstances be at a greater rate than predicted then the LSC will review the current arrangements.**

Question 17: How do I claim the fee?

**The fee is claimed on the Virtual Court Pilot – Solicitor Claim Form. This is an Excel Spreadsheet that can be downloaded from the LSC website and will be used to report all work that you undertake in the Virtual Court. You can complete and submit the form at any time. To send the form to us you will have to create a user account and then download the form.**

**Payment will be as an ad hoc payment and each claim will appear on the relevant BACS statement with the relevant ID.**

**An example of the spreadsheet, a Provider Training Manual and link to create a user account can be found at:**

[http://www.legalservices.gov.uk/criminal/magistrates\\_court.asp#VC](http://www.legalservices.gov.uk/criminal/magistrates_court.asp#VC)

Question 18: Are Counsel able to cover the Virtual Court hearing - either at the Court or at the Police Station?

**You may instruct counsel to cover a Virtual Court hearing. When counsel is instructed it is the providers' responsibility to agree the brief fee and to pay counsel directly.**