



**AMENDMENTS TO GENERAL CRIMINAL AND GENERAL CIVIL  
CONTRACTS**

**For consultation and proposed implementation in April 2006**

Unless, following a written request by The Law Society, we agree to a longer consultation period for some or all of our proposals, this consultation will end on **23 January 2006** and all responses should be sent to:

John Binns  
Legal Adviser  
Criminal Defence Service  
Ground floor,  
Greencroft House  
12 Roger Street  
London WC1N 2JL

E-mail:  
[john.binns@legalservices.gov.uk](mailto:john.binns@legalservices.gov.uk)

DX: 328 Chancery Lane/London

Telephone: 020 7759 1000

**Note:**

In accordance with the Freedom of Information Act 2000, the Legal Services Commission may publish your name and contents of your response unless you provide sufficient reasons for asking us not to. Please ensure that your response is marked clearly if you wish your response or your name to be kept confidential. In any event, confidential responses could still be disclosed in a summarised or anonymised format.

**INDEX**

**A Amendments to General Civil and General Criminal Contracts**

A1 Peer review performance indicator

A2 Rules on marketing

**B Amendments to General Civil Contract Only**

B1 New Focus Reforms – Consequential amendments to the Specification

B2 Annex C Fixed Fee Schemes [Voluntary and Mandatory] –  
Amendments to the Schedule

**C Amendments to General Criminal Contract and Guidance Manuals**

C1 Expansion of scope: Advocacy Assistance and Court Duty Solicitor

C2 Expansion of scope: Incidental proceedings in civil courts  
(and clarification of High Court rates)

C3 Wasted Costs and Central Funds

C4 Postal applications and Distant solicitors rules

C5 References to Revenue and Customs

**D Amendments to Criminal Guidance Manuals Only**

D1 Work done in connection with the Proceeds of Crime Act 2002

D2 Video links

D3 Defendants' attendance: reminder letters

A **narrative** explaining the changes follows on the following pages. The corresponding **Appendices** contain the proposed amendments.

## **NARRATIVE**

### **A Amendments to General Civil and General Criminal Contracts**

#### **A1 Peer review performance indicator – Annex to Contract for Signature**

Following the conclusion of consultation on peer review and the publication of the Commission's policy on it, we propose to introduce a consequential peer review Performance Indicator (under Clause 8 of the Contract Standard Terms) in an Annex to the Contract for Signature and require compliance with it. We also propose an 'avoidance of doubt' amendment to the Criminal Specification to refer to all work authorised by the Contract and funded by the Commission.

Following extensive consultation, the Commission published (accessible at [www.legalservices.gov.uk](http://www.legalservices.gov.uk)) its definitive peer review process in November, in a document entitled "Independent Peer Review". The proposed amendment enables providing services at the appropriate peer review "Level" to be specified as a performance indicator.

The proposed amendments are attached in **Appendix A1**.

#### **A2 Rules on leaflets etc – Amendment to the Specifications**

We propose a minor amendment to the rules so that they match the rule on visits and telephone calls.

The proposed amendments are attached in **Appendix A2**.

**B Amendments to General Civil Contract Only**

**B1 New Focus Reforms – Consequential amendments to the Specification**

Following extensive consultation, amendments to the Funding Code were implemented earlier in the year to give effect to some of the amendments proposed in the New Focus consultation paper – most of these took effect from 25 July 2005.

Minor consequential amendments to the Specification are, therefore, required to ensure that the Funding Code and the Specification match.

The proposed amendments are attached in **Appendix B1**.

**B2 Annex C Fixed Fee Schemes [Voluntary and Mandatory] – Amendments to the Schedule**

We propose to make appropriate amendments to reflect the extension of the scheme under this Schedule and to align the voluntary and mandatory schemes. Amendments are required to reflect the fact that the Tailored Fixed Fee (TFF) scheme has been extended. The Commission also considers that, given that there has been an extension, there is no longer any justification for differences between the voluntary and mandatory schemes – so minor amendments are required.

We also propose to move the guidance on TFF fixed fees (which has already been subject to consultation) from the contract overview to the Specification.

The proposed amendments are attached in **Appendix B2**.

## **C Amendments to General Criminal Contract and Guidance Manuals**

### **C1 Expansion of scope: Advocacy Assistance**

An amendment to the Criminal Defence Service (General) (No 2) Regulations 2001 came into force on 31 October 2005, bringing several types of proceedings into the scope of the Criminal Defence Service. These are proceedings relating to:

- Notification Orders, Sexual Offences Prevention Orders, Foreign Travel Orders and Risk of Sexual Harm Orders under the Sexual Offences Act 2003.
- Parenting Orders for failing to comply with orders under the Powers of Criminal Courts (Sentencing) Act 2000, in cases of exclusion from school, and in respect of criminal conduct and anti-social behaviour.

Two other types of proceedings, not themselves in effect at the time of writing, will come into the scope of legal aid at the time of their commencement.

- Intervention Orders in cases where an Anti-social Behaviour Order has been made, under the Drugs Act 2005.
- Restraining Orders against a defendant who has been acquitted, under the Family Law Act 1996 (as amended by the Domestic Violence, Crime and Victims Act 2004).

The orders under the Sexual Offences Act replace the old Sex Offender Orders under the Crime and Disorder Act 1998, and so references to the latter have been removed. The amended Regulations also change the wording relating to Closure Orders to widen the scope of proceedings covered by this section.

The funding regime and rates for these orders will follow those established for other similar proceedings and includes the Advocacy Assistance scheme and the Court Duty Solicitor scheme. In exceptional cases the Commission may grant Representation for such proceedings in the Crown Court.

Given the length of the list of proceedings now dealt with in this way, we have revised the wording of the Specification and Manuals to avoid unnecessary duplication.

This change affects

- General Criminal Contract Specification Part A 3.2.1 and Part B 8.2.3
- Criminal Bills Assessment Manual 1.3.2
- Duty Solicitor Manual 2.13
- Police Station and Court Duty Solicitor Manual 10.3

The proposed amendments are attached in **Appendix C1**.

## **C2 Expansion of scope: Incidental proceedings in civil courts**

The scope of the General Criminal Contract expressly includes proceedings in the High Court that arise from (are 'incidental' to) criminal proceedings. The principal example is confiscation and restraint proceedings brought under the legislation prior to the Proceeds of Crime Act 2002.

The Commission has, however, had enquiries in some cases relating to proceedings in the County Court that might be regarded as incidental to criminal proceedings, principally where an application must be made to obtain papers from a civil case that are relevant to those proceedings. Under the current regime, such proceedings are outside the scope of both the General Criminal Contract and the civil scheme. The proposal allows such work to be covered under the Contract subject to a procedure for prior approval, which is intended to keep the resulting expenditure under proper observation and control.

As for High Court work under the contract, the rates and claiming procedures will follow the same principles as those for civil work.

Also, Part E 3.6 of the Contract purports to set out the rates applicable to High Court Representation under the Contract. As the accompanying Note makes clear, these are intended to reflect the rates paid for Legal Representation under the General Civil Contract. However, due to an error the rates shown are different. The proposal is simply to amend the table so that it shows the correct rates.

This change affects

- General Criminal Contract Specification Part A 3.2, Part C 1.7 and Part E 3.6
- Criminal Bills Assessment Manual 1.3

The proposed amendments are attached in **Appendix C2**.

## **C3 Wasted Costs and Central Funds**

The General Criminal Contract recognises that there are circumstances in which wasted costs orders may be made against prosecuting authorities, or in which the court may order the defendant's costs to be paid from central funds. In both cases, the legal service provider is obliged to account to the Commission for the relevant costs.

At a time of particular pressure on legal aid expenditure, with costs drivers in criminal cases subject to particular scrutiny, the Commission is keen to improve its monitoring of such orders and to ensure they are applied for where appropriate.

The proposal obliges legal service providers to consider such orders and apply for them where appropriate, taking into account the costs of the application itself. It obliges them to inform the Commission as soon as possible where the amount of the order, if made, would exceed £1,000.

The guidance also applies to work authorized by the Contract, including Crown Court work.

This change affects

- General Criminal Contract Specification Part C 1.21 and 1.22
- Criminal Bills Assessment Manual 10.5 and 10.6

The proposed amendments are attached in **Appendix C3**.

#### **C4 Advice and Assistance applications for 'distant' clients**

The Contract allows applications for Advice and Assistance to be accepted by post, or for other persons to attend on a client's behalf, where there is good reason to do so. It refers to the rules on 'distant solicitors', later in the Contract, for guidance on what amounts to a good reason.

Unfortunately, the reference is ambiguous. This is because some of the factors mentioned in the guidance on distant solicitors relate to whether the legal service provider may take instructions from a distant client at all, while other factors relate to whether travel times for attendance on such a client may exceed the usual limits. The current wording could be read to include only the first set of factors. The result is that where a legal service provider legitimately accepts instructions from a distant client, either they or the client may have to travel purely for the purpose of completing an application.

The Commission considers this inappropriate. The proposal ensures that all clients who for good reason cannot attend the legal service provider's office should be able to make an application by post or to use another person to complete the application on their behalf.

This change affects

- General Criminal Contract Specification Part B 2.1 and 2.2

The proposed amendments are attached in **Appendix C4**.

#### **C5 References to Revenue and Customs**

By virtue of the Commissioners for Revenue and Customs Act 2005, HM Revenue and Customs has replaced the Inland Revenue and HM Customs and Excise. References in the Contract and guidance need to be amended as a result so that references to 'officer/s of HM Customs and Excise' become

## AMENDMENTS TO GENERAL CRIMINAL AND GENERAL CIVIL CONTRACTS

'officer/s of HM Revenue and Customs'. In particular, a reference to Revenue investigations in the Specification, saying that they will be out of scope of the police station scheme, as Revenue officers had no power of arrest, needs to be amended to reflect the fact that HMRC officers do have a power of arrest.

This change affects

- General Criminal Contract Standard Terms, definitions
- General Criminal Contract Specification Part B 3.5.2
- Criminal Bills Assessment Manual 4.20.20 and 7.4.4
- Duty Solicitor Manual
- Police Station and Court Duty Solicitor Costs Assessment Manual

The specific amendment to the Contract referred to above is attached in **Appendix C5**. Other necessary amendments are numerous and technical in nature and have not therefore been reproduced in full.

## **D Amendments to Criminal Guidance Manuals Only**

### **D1 Work done in connection with the Proceeds of Crime Act 2002**

The 2002 Act imposes obligations on solicitors to prevent money laundering, which the Commission recognises will give rise to additional work. Guidance has been produced and consulted upon for Civil work. The proposal is to insert an amended version of that guidance into the Criminal Bills Assessment Manual.

The guidance is attached in **Appendix D1**.

### **D2 Video links**

It is increasingly possible to arrange conferences with clients in custody by way of video link. The Commission has received enquiries on what costs may be remunerated in connection with video links installed at the premises of legal service providers, and has produced guidance as a result.

The guidance is attached in **Appendix D2**.

### **D3 Defendants' attendance: reminder letters**

The LSC is currently engaged with partner CJS agencies in an attempt to reduce the number of ineffective hearings caused by the non-attendance of defendants. Following discussions within the inter-agency Defendant Attendance Steering Group, it has been agreed that solicitors should be encouraged to remind their client of an impending court appearance and that this reminder may take the form of a telephone reminder or a letter.

Therefore, from 3 October 2005, where a solicitor telephones their client (or writes a letter) reminding the client of an impending court appearance, the solicitor may claim the standard rate for the telephone call or letter. This reminder telephone call / letter is in addition to the current requirement to inform the client of the next court hearing (as required by the Specialist Quality Mark standard F1.2.)

The reminder call (or letter) does not need to take place on a specific day (e.g. the day before the court appearance) but should take place between the date that the client is first informed of the next court hearing and the actual date of the hearing (including the day of the hearing in the event of a telephone call).

The guidance is attached in **Appendix D3**.

## **Appendix A**

### **Amendments to General Civil and General Criminal Contracts**

#### **A1 Peer Review Performance Indicator (Annex to Contract for Signature etc)**

##### **General Civil Contract**

Peer Review Performance Indicator

The quality of your Contract Work in any Category of Work, as determined by the Independent Peer Review process specified by us, is a Performance Indicator.

The quality of your Contract Work in any Category of Work must be either Level 1, Level 2 or Level 3 as determined by that Independent Peer Review process.

If the quality of such Contract Work is Level 4, as determined by that Independent Peer Review process, this is a breach of Contract.

If the quality of such Contract Work is Level 5, as determined by that Independent Peer Review process, this is a Fundamental Breach.

##### **General Criminal Contract**

Peer Review Performance Indicator

The quality of your Contract Work as determined by the Independent Peer Review process specified by us, is a Performance Indicator.

The quality of your Contract Work must be either Level 1, Level 2 or Level 3 as determined by that Independent Peer Review process.

If the quality of your Contract Work is Level 4, as determined by that Independent Peer Review process, this is a breach of Contract.

If the quality of your Contract Work is Level 5, as determined by that Independent Peer Review process, this is a Fundamental Breach.

For the purpose of this Performance Indicator “Contract Work” includes such other publicly funded work that you are authorised to perform by this Contract e.g. Representation in the Crown Court, Court of Appeal and House of Lords.

##### **General Criminal Contract Specification**

Amend Part A 1.1.2 as shown below:

For the purposes of regulation 13(1)(b) of the CDS (General) (No.2) Regulations 2001 (and subject to regulations 13.2 and 11 of those regulations) you are authorised to provide representation in the Crown Court, Court of Appeal and House of Lords (this Contract being a crime franchise contract for the purposes of those regulations) and in providing such representation (and any other representation funded by us under the Act that is not covered by another contract between you and us) you must comply with this Contract and comply with the Contract Standard Terms and any Performance Indicators as if such representation were Contract Work.

## **A2 Rules on leaflets etc – Amendment to the Specifications**

### **General Criminal Contract Specification**

Amend Part B Rule 7.1 as follows:

Contracted legal services may not be marketed by means of unsolicited visits or telephone calls, whether by you or another person or body.

The marketing of contracted services via leaflets, letters or circulars - whether by you or another person or body for you (directly or indirectly) - should not be undertaken without our express permission.

### **General Civil Contract Specification**

Amend Rule 1.2 as follows:

The marketing of contracted services via leaflets, letters or circulars - whether by you or another person or body for you (directly or indirectly) - should not be undertaken ~~except with~~ without our express permission.

## **Appendix B**

### **Amendments to General Civil Contract Only**

#### **B1 New Focus Amendments to the Specification – General**

##### **Rule 1.5.2 amend as shown below:**

Guidance on the exercise of the following Devolved Powers in Licensed Work is contained in the “Funding Code Decision Making Guidance” in Part C of volume 3 of the LSC Manual:

- (a) **Grant or refuse an application for Authorised Representation in Specific Family Proceedings in a magistrates’ court** at ~~Section 20.20 of in the~~ Family Guidance in at paragraph 3C-258 of Volume 3 of the Manual.
- (b) **Grant or refuse an application for an emergency certificate** at ~~Sections 12.1-12.15 of in the~~ Emergency Representation guidance at ~~paragraphs 3C-090 to 3C-107 of in~~ Volume 3 of the Manual.
- (c) **Amend or refuse to amend an emergency certificate** at ~~Section 12.6 of in the~~ Emergency Representation guidance at ~~paragraphs 3C-108 to 3C-113 of in~~ Volume 3 of the Manual.
- (d) **Amend or refuse to amend a limitation on a substantive certificate** at ~~Section 22.4 of in the~~ Code Procedures guidance at ~~paragraphs 3C-353.1 to 3C-353.4 of in~~ Volume 3 of the Manual.
- (e) **Grant or refuse an application for Help with Mediation** at ~~Section 20.9 of in the~~ Family guidance at ~~paragraph 3C-242 of in~~ Volume 3 of the Manual.

##### **Rule 4.2 Help at Court – venue – amend as shown below:**

**Subject to Rule 4.3, Help at Court may be provided only in relation to ~~in the High Court or any county court or magistrates’ court where the proceedings are of a type for which advocacy may be provided under~~ funded in accordance with directions under s.6(8) or paragraph 2 of schedule 2 to the Access to Justice Act 1999.**

##### **Rules 6.5 and 6.6:**

Show the words “or Support Funding” in underline each time it occurs, followed by the words “(see Rule 6.7)”.

##### **Rule 6.7 Costs of Support Funding:**

Add the following words after the heading:

NB Support Funding was abolished with effect from 25 July 2005. No new Support Funding certificates will be granted from that date.

**Rule 6.8 Inter Partes Costs:**

Amend the fourth paragraph by adding the words (see Rule 6.7) after “**This Rule does not apply to Support Funding**”

**Delete Rule 6.8.2 and remove the numbering from the paragraph above.**

**Rule 7.28:**

Amend the last sentence as shown below:

**In a more complex case or where negotiations have not succeeded it may be appropriate to use General Approved Family Help to seek to reach a negotiated settlement.**

**Appendix B Payments on account during the currency of the certificate**

Amend as shown below:

2. Rule 6.6 applies to all certificated work except:
  - (a) ~~Support Funding~~
  - (ba) Emergency representation or representation in Specified Family Proceedings in the magistrates’ court
  - (eb) Help with Mediation
3. ~~In the case of Support Funding, separate arrangements for payments on account are made in the application and certificate.~~

**New Focus Amendments to the Specification – 15 Clinical Negligence**

Delete current paragraphs 11, 12 & 13 and their heading “Alternatives to Litigation”. Renumber current paragraphs 14 & 15 as paragraphs 11 & 12. Insert the paragraphs below as paragraphs 13 to 23 and renumber current paragraphs 16 to 21 as paragraphs 24 to 29.

13. All applications for funding for clinical negligence cases required to be sent to the Commission (whether initial applications or those for both scope and costs amendments) should be checked and approved by the franchise category supervisor before being sent to the regional office. A note that this has been done (or at least a copy of the application form countersigned by the supervisor) should be retained on the file. This function may also be carried out by other clinical negligence panel members in the firm (or during short periods when the supervisor or panel member is temporarily unavailable, by a deputy), provided that the authority to do so has been delegated to them by a category supervisor.

### Funding Code Criteria

14. Clinical negligence proceedings are subject to standard criterion 5.4.3, which allows legal representation to be refused if there are complaints systems, Ombudsman schemes or forms of alternative dispute resolution, which should be tried before litigation is pursued.
15. However, applications for investigative help are subject to an additional criterion (9.2.2) under which an application may be refused if it is more appropriate for the client to pursue the NHS complaint procedure than litigation. This is an important criterion, which ensures that litigation against the NHS is not pursued unless it is the appropriate remedy for the client.
16. Criterion 9.2.2 applies only to investigative help, not full representation. It is very rare for clinical negligence certificates to start as full representation but those that do are still subject to the general ADR criterion 5.4.3.
17. Since April 2004 NHS complaints in England have operated under the supervision of the independent Health Care Commission. NHS complaints in Wales are administered somewhat differently, with complaints reviewed by an independent reviewer or the Health Service Ombudsman. The complaints procedure is not designed to resolve allegations of clinical negligence and cannot provide the client with the same remedies as litigation. The primary purpose of a complaints procedure is to provide the client with an explanation of what occurred and, if appropriate, an apology or reassurance as to future standards. This may allow the client to make a better-informed decision as to whether litigation is the appropriate remedy.
18. Refusal under 9.2.2 is discretionary. The private client test will be considered in each case. The question for the Commission is: would a reasonable client of moderate means be prepared to pay solicitors privately to investigate a potential claim before first pursuing a formal complaint against the NHS and considering the response received? Examples of circumstances in which it would not be appropriate to refuse funding under this criterion include where:
  1. Proceedings must be issued as a matter of urgency, for example because of a limitation deadline and a satisfactory explanation has been given for any delay in making the application. Any funding granted in such circumstances is likely to be limited to the issue of protective proceedings only;
  2. The potential claim is of such severity that legal investigation is inevitable and should be pursued without delay. Cerebral palsy claims typically fall within this category;
  3. The case falls outside the NHS complaints scheme or the client has been told that a complaint may not be pursued further.

19. Note that the decision whether to refer a case to the complaints procedure does not depend on the case having a particular size of potential damages or on the importance of the case to the client. However, the smaller the damages claim the harder it would be to establish on private client principles that pursuit of the complaints procedure is reasonable. In cases where financial compensation is not the client's primary motivation, for example when seeking an explanation of circumstances leading to the death of a family member in hospital, pursuit of the complaint procedure may be particularly appropriate.
20. If the complaints procedure has been pursued in good faith and with full cooperation by the client but no satisfactory formal response has been made to the complaint within 6 months of it being made, a grant of investigative help may then be appropriate. There is no requirement that complaints must be pursued to the Healthcare Commission (or its equivalent in Wales) in all cases before legal aid can be considered. Where a written complaint's response has not dealt with that adequately from the client's point of view, the private client test must again be applied to decide whether it is reasonable to ask the Healthcare Commission to review the complaint or to proceed with legal remedies.
21. Following initial screening specialist practitioners will be expected to carry out a preliminary investigation which allows for further merits screening before the commitment of the substantial levels of time and costs involved in all the steps covered by a Formal Investigation. A preliminary investigation is particularly relevant in cases where the estimate of damages is modest, i.e. less than £25,000, or where there are specific.
22. Criterion 5.6.3 of the General Funding Code applies to applications for funding for Investigative Help in clinical negligence cases. This means that if the client's claim is primarily a claim for damages, Investigative Help will be refused unless the damages are likely to exceed £5,000. However, this damages cut-off does not apply to claims which have a significant wider public interest or are not primarily claims for damages. Although most clinical negligence actions are simply damages claims, a claim concerning the death of a loved one may not be primarily concerned with damages, especially where the death engages Article 2 of ECHR. However, in Article 2 cases, participation in the inquest, covered if appropriate by exceptional funding under section 6(8)(b) of the Act, will often be a more appropriate vehicle by which to investigate the circumstances of the death than a civil damages claim.
23. The £5,000 damages threshold applies only to Investigative Help so that a clinical negligence claim in which the merits were clear from the outset, for example, a failed sterilisation case, could receive Full Representation even if the damages were likely to be under £5,000, provided that the other Criteria for Full Representation were satisfied.

**B2 Annex C Fixed Fee Schemes [Voluntary and Mandatory] – Amendments to the Schedule**

**Annex C Fixed Fee Schemes [Voluntary and Mandatory]**

Make appropriate amendments to reflect the extension of the scheme under this Schedule and to align the voluntary and mandatory schemes.

Paragraph 5(e): delete the paragraph (in italics) that applies only to the voluntary scheme, show the paragraph that applies only to the mandatory scheme as applying to both schemes (by deleting the underlining) and amend it to relate to cost compliance audits before April 2005.

Paragraph 6: move the word “reasonably”

Paragraph 7: show both paragraphs as applying to both the voluntary and the mandatory schemes (by showing both in ordinary type instead of in italics for the voluntary and in underline for the mandatory) and renumber the second paragraph as 7A. Also amend to refer to the 2005-6 Schedule (instead of the 2004-5 Schedule) and to reflect the fact that the guidance (currently in the Contract Overview) is to move to the Specification.

Paragraph 11(g): add a reference to paragraph 7A

Paragraph 13: delete the paragraph (in italics) that applied to the voluntary scheme only and remove the underlining from the paragraph that applied only to the mandatory scheme (so that it applies to both the voluntary and the mandatory schemes).

**Can we Assess Fixed Fee Claims?**

~~*e) We may reduce the Fixed Fee in any Category or Categories of Work to reflect the outcome of a costs compliance audit (including any appeal). However, we will only make such reductions where the assessed costs of the file sample for the audit are more than 10% below the lower of either the amount claimed, or the amount of the Fixed Fees due and we have significant concerns about either value for money or quality of work. If we are considering a reduction under this sub paragraph we will normally arrange for your files to be peer reviewed.*~~

- e) We may reduce the Fixed Fee in any Category or Categories of Work to reflect the outcome of a costs compliance audit commenced before April 2005 (including the result of any appeal) on a sample of your Claims from this Schedule. However we will only make such reductions where the Assessed costs of the file sample for the audit are more than 10% below the lower of either the amount claimed, or the amount of the Fixed Fees due.
- f) Any reductions made under sub-paragraph (e) above will apply to Fixed Fee Claims made after the Regional Director gives you notice

of the reductions. Where you appeal the decision, we will not implement the reductions pending the appeal, but may backdate any reduction that would apply following the appeal to the same date that it would have taken effect had no appeal been made.

**Can we vary the Fixed Fees during this Schedule other than on Assessment?**

6. We may amend any Fixed Fee as we reasonably consider ~~reasonably~~ necessary to correct any error (such as a miscalculation of the total of your Claims used to make up an average). If you have not requested the amendment, we will give you a reasonable opportunity (at least 21 days) to comment on the amendment before it is made. The amendment will take effect from such date as is necessary to correct the error (and may, for example, be backdated to the start of this Schedule).
  7. We may ~~also~~ reduce the Fixed Fee in this Schedule in any Category of Work where the average of your Claims in that Category of Work over the ~~2004-2005~~ 2005-6 Schedule was significantly (as defined by Guidance) below the Fixed Fee.
    - a) 'Average' in this context means the total value (less any amount Assessed off) of all your Controlled Work Claims in any Category of Work made during the 2005-6 Schedule, divided by the total number of such Claims.
    - b) If we amend any rate under this paragraph 7, then the new rate must be set at a level no lower than that 'average' and may be set at a level in between that 'average' and the existing Fixed Fee.
    - c) Any amendments made under this paragraph may be backdated to the beginning of this Schedule (i.e. to 1 April 2006) provided that we serve notice of the amendment on or before 31 July 2006. We will need to backdate the amendment because the full data in relation to the Claims in your previous Schedule will not be available until some weeks into this Schedule. If we serve the notice of amendment later than 31 July 2006, the amendment will take effect from the date of the notice.
    - d) We will only make an amendment under this paragraph 7 where we have significant concerns about either value for money or quality of work.
  - 7A We may *also* reduce the Fixed Fee in any Category of Work where the average (the total value recorded on the Consolidated Matter Report Form, less any amount Assessed off, divided by number of Claims) of your Assessed Controlled Work Claims in that Category of Work over any six-month period is below the Fixed Fee. If we amend any Fixed Fee under this paragraph, then the new Fixed Fee must be set at a level no lower than that average and may be set at a level in between that average and the existing Fixed Fee.
- 11(g) Any Claims which we have agreed to treat as Exceptional Claims under the provision of this paragraph 11 will not be included in any sample used for the purposes of paragraph 5 (e) above or in any "average" calculated under paragraphs 7 or 7A above.

***When do you open separate Matter Starts?***

~~13 You should not commence two or more Matter Starts for the same Client where, under the previous payment arrangements, you would only have commenced one. You should continue to apply the Rules on separate Matter Starts as set out in the Specification. You should note that:~~

~~(a) The provision of Help at Court or Controlled Legal Representation is a matter for which you have been providing Legal Help will not count as a separate Matter Start.~~

~~(b) In the Family Category of Work, one Matter Start covers the whole proceedings or contemplated proceedings decree and all ancillaries including Children Act Applications.~~

**Should payment of Fixed Fees affect your performance of the Contract?**

13 Notwithstanding the fact that you will only be entitled to payment of the Fixed Fee:

- a) You should continue to act reasonably in the best interests of the Client as if you were paid on an hourly rate.
- b) You should not intentionally change your case mix in order to have the effect of targeting lower cost work.
- c) You should apply for Legal Representation on a Client's behalf at the appropriate point (see the Specification).
- d) You should not commence two or more Matter Starts for the same Client where, under the previous payment arrangements, you would have only commenced one. You should continue to apply the Rules on separate Matter Starts as set out in the Specification. You should note that:
  - (i) The provision of Help at Court or Controlled Legal Representation in a matter for which you have been providing Legal Help will not count as a separate Matter Start.
  - (ii) In the Family Category of Work, one Matter Start covers the whole proceedings or contemplated – decree and all ancillaries including Children Act Applications.
- e) You should report cases in the most appropriate Category of Work, and not according to the amount of the Fixed Fee.

## **Appendix C**

### **Amendments to General Criminal Contract and Guidance Manuals**

#### **C1 Expansion of scope: Advocacy Assistance**

##### **General Criminal Contract Specification**

Amend Part A 3.2.1 as follows:

1. This Class includes all work undertaken for a Client during Criminal Proceedings in a Matter or Case from the date of charge or summons. The following Units of Work fall within this Class:
  - (a) **Advice and Assistance** to a Client who is eligible for help from the court Duty Solicitor acting as such under Part B, Section 8.3;
  - (b) **Advocacy Assistance in the magistrates' court** in the following circumstances:  
**By any solicitor (including a court Duty Solicitor acting as such)**
    - (i) to an individual at risk of imprisonment in civil proceedings for failure to pay a fine or other sum ordered or to obey an order of a magistrates' court;
    - (ii) to a respondent in proceedings under sections 1, or 1D, ~~2 or 2A~~ of the Crime and Disorder Act 1998 relating to an anti-social behaviour order ~~or sex offender order~~ (including an application to vary or discharge such an order);
    - (iii) to a respondent in proceedings under sections 2 and 5 of the Anti-social Behaviour Act 2003 relating to ~~the making or extension of~~ a closure order;
    - (iv) to a respondent in proceedings under section 8(1)(b) of the Crime and Disorder Act 1998 relating to a parenting order made where an anti-social behaviour order or a sex offender order is made in respect of a child or young person (including an application to vary or discharge such an order);
    - (v) to a respondent in proceedings under section 8(1)(c) of the Crime and Disorder Act 1998 relating to a parenting order made on the conviction of a child or young person (including an application to vary or discharge such an order);
    - (vi) to a respondent in proceedings under section 14B (banning orders made on complaint), an applicant in proceedings under section 14G (variation of a banning order) or section 14H (termination of a banning order) of the Football Spectators Act 1989;
    - (vii) to a respondent in proceedings under sections 20 and 26 of the Anti-Social Behaviour Act 2003 relating to parenting orders in cases of exclusion from school and parenting orders in respect of criminal conduct and anti-social behaviour;

- (viii) to a respondent in proceedings under sections 97 and 100 of the Sexual Offences Act 2003 relating to notification orders and interim notification orders;
- (ix) to a respondent in proceedings under sections 104, 108 and 109 of the Sexual Offences Act 2003 relating to sexual offences prevention orders and interim sexual offences prevention orders;
- (x) to a respondent in proceedings under sections 114 and 118 of the Sexual Offences Act 2003 relating to foreign travel orders;
- (xi) to a respondent in proceedings under sections 123, 125 and 126 of the Sexual Offences Act 2003 relating to risk of sexual harm orders and interim risk of sexual harm orders;
- (xii) to a respondent in proceedings under Part 1A of Schedule 1 to the Powers of Criminal Courts (Sentencing) Act 2000 relating to parenting orders for failure to comply with orders under section 20 of that Act;
- (xiii) to a respondent in proceedings under section 5A of the Protection from Harassment Act 1997 relating to restraining orders on acquittal;

**By a court Duty Solicitor acting as such**

- (xiv) subject to Part B, paragraph 8.3.1(b) at any bail application where the defendant is held in custody;
- (xv) to a defendant not in custody provided it is in connection with an imprisonable offence;
- (xvi) to a parent or guardian at risk of being bound over under section 150 of the Powers of Criminal Courts (Sentencing) Act 2000 or in breach of such an order;
- (xvii) to a recipient of a notice under section 21B(2) of the Football Spectators Act 1989;
- (xviii) to an individual at risk of imprisonment in Criminal Proceedings for failure to pay a fine or other sum ordered or to obey an order of a magistrates' court.

**(c) Representation in a magistrates' court** pursuant to a Representation Order including:

- (i) advice on an appeal;
- (ii) any related bail proceedings in the Crown Court or High Court,
- (iii) pre-Order cover provided in accordance with Part B, Rule 5.13 of this Specification,

but excluding any proceedings that are sent for trial under section 51 of the Crime and Disorder Act 1998 (except proceedings in a magistrates' court following a remittal under paragraphs 10(3)(a) or 13(2) of Schedule 3 to the Crime and Disorder Act 1998);

**(d) Advocacy Assistance (or Representation pursuant to a Representation Order granted by the Commission) in the Crown Court:**

- (i) on an appeal under section 4 of the Crime and Disorder Act 1998 against an anti-social behaviour order ~~or a sex-offender order;~~

- (ii) on an appeal under section 10 of that Act against a parenting order;
- (iii) on an appeal under section 6 of the Anti-social Behaviour Act 2003 against the making of a closure order;
- (iv) to a respondent under section 8(1)(c) of that Act relating to a parenting order made on the conviction of a child or young person in the Crown Court (including an application to vary or discharge such an order);
- (v) on an appeal under section 14D (banning orders made on complaint) or section 21D (compensation following refusal of a banning order) of the Football Spectators Act 1989;
- (vi) on an appeal under sections 22 and 28 of the Anti-Social Behaviour Act 2003 relating to parenting orders in cases of exclusion from school and parenting orders in respect of criminal conduct and anti-social behaviour;
- (vii) on an appeal under section 101 of the Sexual Offences Act 2003 relating to notification orders and interim notification orders;
- (viii) on an appeal under section 110 of the Sexual Offences Act 2003 relating to sexual offences prevention orders and interim sexual offences prevention orders;
- (ix) on an appeal under section 119 of the Sexual Offences Act 2003 relating to foreign travel orders;
- (x) on an appeal under section 127 of the Sexual Offences Act 2003 relating to risk of sexual harm orders and interim risk of sexual harm orders;
- (xi) on an appeal under Part 1A of Schedule 1 to the Powers of Criminal Courts (Sentencing) Act 2000 relating to parenting orders for failure to comply with orders under section 20 of that Act;
- (xii) on an appeal under section 5A of the Protection from Harassment Act 1997 relating to restraining orders on acquittal.

Amend Part B 8.3.2 as follows:

### **8.3 Service requirements for court Duty Solicitor cases**

1. A Duty Solicitor at a magistrates' court shall provide the following services to any defendant who wishes to receive Advice and Assistance or Advocacy Assistance:
  - (a) advice to a Client who is in custody;
  - (b) the making of a bail application unless the Client has received such assistance on a previous occasion.
2. The Duty Solicitor may subject to paragraph 8.3.3 below also provide:
  - (a) Advice and Assistance (including Advocacy Assistance) to a Client who is in custody on a plea of guilty where the Client wishes the case to be concluded at that appearance in court, unless the Duty Solicitor considers that the case should be adjourned in the interests of justice or of the Client;

- (b) where necessary, Advice and Assistance (including Advocacy Assistance) to a Client who is before the court as a result of failure to pay a fine or other sum ordered or to obey an order of the court, and such failure may lead to the Client being at risk of imprisonment;
- (c) Advice and Assistance and, where appropriate, Advocacy Assistance to any other Client who is not in custody provided it is in connection with an imprisonable offence where, in the opinion of the Duty Solicitor, such a Client requires Advice and Assistance or Advocacy Assistance;
- (d) help to a Client who is eligible for assistance from the court Duty Solicitor to make an application for a Representation Order in respect of any subsequent appearance of the Client before the court. Where such an application is made the Duty Solicitor shall enquire whether the Client wishes to instruct another Solicitor to act for him or her. If the Client does so wish, the Duty Solicitor shall insert the name of that Solicitor in the application form;
- ~~(e) Advice and Assistance and, where appropriate, Advocacy Assistance to a parent or guardian in connection with a proposal by the court to bind over the parent or guardian under section 150 of the Powers of Criminal Courts (Sentencing) Act 2000 or in breach of such an order;~~
- ~~(e) Advice and Assistance and, where appropriate, Advocacy Assistance to a Client in circumstances described in Part A 3.2.1 (b) of the Specification; respondent in proceedings under sections 1 or 1D (anti-social behaviour order), 2 or 2A (sex offender order) or 8 (1) (b), (c) or (d) (parenting order) of the Crime and Disorder Act 1998 or an applicant or respondent in proceedings to vary or discharge an order made against that person;~~
- ~~(g) Advice and Assistance and, where appropriate, Advocacy Assistance, to a respondent in proceedings under section 14B (banning orders made on complaint, an applicant in proceedings under section 14G (variation of a banning order) or section 14H (termination of a banning order) and a recipient of a notice under section 21B (2) of the Football Spectators Act 1989.~~
- (f) Advice and Assistance and, where appropriate, Advocacy Assistance to an individual applying to vary bail conditions imposed by police under Section 47 (1E) of the Police and Criminal Evidence Act 1984, as amended by the Criminal Justice Act 2003.

## Criminal Bills Assessment Manual

Amend paragraph 1.3.2 as follows:

1. Certain proceedings have been prescribed under Section 12(2)(g) as criminal proceedings by Regulation 3(2) of the General Regulations:
  - (a) civil proceedings in a magistrates' court arising from failure to pay a sum due or to obey an order of that court where such a failure carries the risk of imprisonment;
  - (b) proceedings under Sections 1, 1D, ~~2, 2A~~ and 4 of the 1998 Act relating to anti-social behaviour orders ~~or sex offender orders~~;

## AMENDMENTS TO GENERAL CRIMINAL AND GENERAL CIVIL CONTRACTS

- (c) proceedings under Section 8(1)(b) of the 1998 Act relating to parenting orders made where an anti-social behaviour order or a sex offender order is made in respect of a child;
- (d) proceedings under Section 8(1)(c) of the 1998 Act relating to parenting orders made on the conviction of a child;
- (e) proceedings under Section 9(5) of the 1998 Act to discharge or vary a parenting order made as mentioned in sub-paragraph (c) or (d);
- (f) proceedings under Section 10 of the 1998 Act to appeal against a parenting order made as mentioned in sub-paragraph (c) or (d);
- (g) proceedings under Sections 14B, 14D, 14G, 14H, 21B and 21D of the Football Spectators Act 1989 (banning orders and references to a court);
- (h) proceedings under Sections 2, 5 and 6 of the Anti-Social Behaviour Act 2003 relating to ~~the making or extension of a closure orders, and appeals against such an order.~~
- (i) proceedings under sections 20, 22, 26 and 28 of the Anti-Social Behaviour Act 2003 relating to parenting orders in cases of exclusion from school and parenting orders in respect of criminal conduct and anti-social behaviour;
- (j) proceedings under sections 97, 100 and 101 of the Sexual Offences Act 2003 relating to notification orders and interim notification orders;
- (k) proceedings under sections 104, 108, 109 and 110 of the Sexual Offences Act 2003 relating to sexual offences prevention orders and interim sexual offences prevention orders;
- (l) proceedings under sections 114, 118 and 119 of the Sexual Offences Act 2003 relating to foreign travel orders;
- (m) proceedings under sections 123, 125, 126 and 127 of the Sexual Offences Act 2003 relating to risk of sexual harm orders and interim risk of sexual harm orders;
- (n) proceedings under Part 1A of Schedule 1 to the Powers of Criminal Courts (Sentencing) Act 2000 relating to parenting orders for failure to comply with orders under section 20 of that Act; and
- (o) proceedings under section 5A of the Protection from Harassment Act 1997 relating to restraining orders on acquittal.

(The 1998 Act means the Crime and Disorder Act 1998).

### **Duty Solicitor Manual**

Amend paragraph 2.13 as follows:

#### **2.13 Defendants on bail:**

1. These defendants may miss the opportunity to see the duty solicitor because they may arrive at court at different times. There may be no system for such defendants to report when they arrive at court and duty solicitors may be less interested in such cases as they are less likely to lead on to representation. Particular efforts therefore need to be made to ensure that bailed defendants do not slip through the duty solicitor net. Such arrangements should include a display of duty solicitor posters (see 2.15), may include the wearing of badges by duty solicitors (see 2.14) and, with the co-operation of the court, introducing arrangements whereby defendants are encouraged to report to a member of the court staff on arrival at the court who will ask them if they wish to see the duty solicitor. Alternatively the court may be able to organise a desk in the foyer of the court clearly marked “duty solicitor” but this is only likely to be relevant in very busy courts where one duty solicitor specifically covers bail cases. Defendants on bail may be assisted by the court duty solicitor if charged with an imprisonable offence, applying to vary bail conditions imposed by police under section 47 (1E) of the Police and Criminal Evidence Act, or in the circumstances described in Part A 3.2.1 (b) of the Specification. ~~or if he or she is:~~

[Remove list]

## **Police Station and Court Duty Solicitor Costs Assessment Manual**

Amend paragraph 10.3 as follows:

1. The scope of court duty solicitor work is defined in the Criminal Proceedings Class of Work (GCC Part A Section 3.2).
2. Service requirements for court duty solicitor cases are detailed within the Contract (GCC Part B Section 8.3) and are reproduced at **Appendix 10** of this manual.

[Remove list]

## **C2 Expansion of scope: Incidental proceedings in the County Court (and clarification of High Court rates)**

### **General Criminal Contract Specification**

Amend Part A 3.2, para 1 (e) as follows:

- (e) **Representation in the High Court or (if approved in advance by us) the County Court** in any proceedings arising from Criminal Proceedings (including applications in the High Court arising from Criminal Proceedings funded under the Legal Aid Act 1988) except bail proceedings under paragraph 3.2.1(c)(ii), appeals by way of case stated under paragraph 4.2.1(b) and Associated CLS Work under

Section 6 of this part. You must obtain prior approval from us to undertake County Court work under this section.

Amend Part C 1.7 as follows:

**1.7 Claims for High Court or (if approved) County Court Representation**

The procedures under this Contract for the Assessment of remuneration for Representation in the High Court or (if approved by us) the County Court for a Claim under Part A, paragraph 3.2.1(e) (certain High Court or County Court proceedings arising from Criminal Proceedings), 4.2.1(b) (appeals by way of case stated) or Subsection 6.2 (Associated CLS Work) of this Specification shall be the same as those contained in regulations 48, 84, 104 to 107A, 108 to 110, 112, 113 (1), (2) and (4) - (7), 119 (1) and 122 of the Civil Legal Aid (General) Regulations 1989 and prior authority may be applied for and granted in accordance with Part B, Rule 5.2 of this Specification.

Claims for Representation in the High Court under Part A, Section 6 (Associated CLS Work) shall be made in accordance with the rules applicable under the General Civil Contract.

1. The reference in this Rule to the Civil Legal Aid (General) Regulations 1989 refers to those regulations as amended by the Civil Legal Aid (General) (Amendment) Regulations 2000 and the Access to Justice Act 1999 (Commencement No. 3 and Transitional Provisions and Savings) Order 2000.
2. The references in Regulations 104 and 107A of the Civil Legal Aid (General) Regulations to the Legal Aid in Civil Proceedings (Remuneration) Regulations 1994 and the Legal Aid in Family Proceedings (Remuneration) Regulations 1991 mean these regulations as amended by and subject to the Commencement No. 3 Order.

Amend Part E 3.6 as follows:

**3.6 High Court and (if approved) County Court Representation under a Representation Order (excluding applications to the High Court for bail)**

[Remove table and replace with the following table]

	<b><u>High Court</u></b>	<b><u>County Court</u></b>
<u>1. Routine letters out</u>	<u>£7.40 per item</u>	<u>£6.50 per item</u>
<u>2. Routine telephone calls</u>	<u>£4.10 per item</u>	<u>£3.60 per item</u>
<u>3. All other preparation work including any work which was reasonably done arising out of or incidental to the proceedings, interviews with client, witnesses, and other parties; obtaining evidence; preparation and consideration</u>	<u>£74.00 per hour</u> <u>(£78.50 per hour</u>	<u>£65.00 per hour</u> <u>£69.00 per</u>

AMENDMENTS TO GENERAL CRIMINAL AND GENERAL CIVIL CONTRACTS

	<u>High Court</u>	<u>County Court</u>
<u>of, and dealing with, documents, negotiations and notices; dealing with letters written and received and telephone calls which are not routine.</u>	<u>where solicitor's office situated within legal aid area 1)</u>	<u>hour</u>
<u>4. Attending counsel in conference or at the trial or hearing of any summons or application at court, or other appointment.</u>	<u>£36.40 per hour</u>	<u>£32.00 per hour</u>
<u>5. Attending without counsel at the trial or hearing of any cause or the hearing of any summons or other application at court, or other appointment.</u>	<u>£74.00 per hour</u>	<u>£65.00 per hour</u>
<u>6. Travelling and waiting in connection with the above matters.</u>	<u>£32.70 per hour</u>	<u>£28.75 per hour</u>

**Note:**

*The above table summarises the standard hourly rates. The remuneration provisions which govern this work are the same as those rates (including enhanced rates) which are payable from time to time for Legal Representation in accordance with the General Civil Contract.*

**C3 Wasted Costs and Central Funds**

**General Criminal Contract Specification**

Amend Part C 1.21 and 1.22 as follows:

**1.21 Wasted Costs**

**Where a wasted costs order has been made under section 19 of the Prosecution of Offences Act 1985 against you, your firm or Counsel instructed by you in proceedings in which Advocacy Assistance or Representation is provided under this Contract, then you must submit a copy of the order with your Claim.**

**If the court orders that you are not entitled to be paid for Work, that that Work must not be included in your Claim.**

**On Assessment, the Regional Director may disallow the amount of work done to which the wasted costs order relates. In those circumstances, the amount disallowed will be that amount or the amount of the wasted costs order, whichever is the greater.**

**In all circumstances where it may be appropriate to apply for a wasted costs order in your favour in respect of Contract Work (including Crown Court work), you must consider whether to make it bearing in mind the costs involved in the application itself. Where you decide that an application is appropriate and the amount of the order would if made exceed £1,000, you must inform us as soon as possible.**

If a wasted costs order is made in your favour and you have received payment, you must deduct the amount of wasted costs paid from your Claim. If you have not received payment of wasted costs at the time you submit your Claim, you may Claim the full sum due and pay us the amount of any wasted costs as soon as they are received by you.

1. The fact that a wasted costs order had been made against you, your firm or Counsel is a factor which we may take into account on Assessment.

#### **1.22 Payment from Central Funds**

**In all circumstances where it may be appropriate to claim for costs from central funds in respect of Contract Work (including Crown Court work), you must consider whether to claim bearing in mind the costs involved in the application itself. Where you decide that an application is appropriate and the amount of the claim would if made exceed £1,000, you must inform us as soon as possible.**

If you have made, or will make, a Claim for costs from central funds in proceedings funded under this Contract, you must notify us when you submit a Claim to us.

If you are entitled to Claim for the work done under this Contract, then you should do so, prior to making any Claim from central funds.

#### **Criminal Bills Assessment Manual**

Amend paragraph 10.5.8 as follows:

8. From time to time, the Commission is asked to fund defence solicitors in pursuing a wasted costs application (often against the prosecuting authorities) once the criminal proceedings have concluded. Solicitors are obliged under Part C 1.21 of the Specification to inform the Commission as soon as possible if an application is to be made for costs exceeding £1,000. Such work can be deemed as “incidental” to the original order. Before authorising a supplier to pursue such an application the regional office should obtain details of the basis of the application, the costs of pursuing it and the amount of wasted costs at stake. A judgment must then be made about the prospects of success and the cost/benefit involved having regard to protecting public funds. If authorisation is given to proceed, the costs of pursuing the application will be subject to assessment in the normal way as a supplemental claim that will attract a non-standard fee. The solicitor should be asked to report regularly on progress of the application and the costs incurred to date so that cost/benefit can be kept under review.

Amend paragraph 10.6.8 as follows:

8. Assessors should exercise care when a claim for costs has been made from central funds to ensure that there is no double claiming for items which are covered under the representation order (see also section 5 and section 4.2). The GCC requires solicitors to notify the Commission of any actual or intended claim from central funds when a claim is submitted for payment by the Commission. Solicitors are obliged under Part C 1.22 of the Specification to inform the Commission as soon as possible if an application is to be made for costs exceeding £1,000. In the case of a claim on Form CDS6, the solicitor must write separately to the appropriate processing centre (quoting the UFN) to provide notification of the central funds claim and the net amount i.e. the amount payable by the Commission and not central funds will be included on the next CDS6 claim. The general principle is that work should be claimed under the contract, where possible, prior to making a claim from central funds (Part C, Rule 1.22 GCC).

#### **C4 Advice and Assistance applications for ‘distant’ clients**

##### **General Criminal Contract Specification**

Amend Part B 2.1 and 2.2 as follows:

##### **2.1 Postal Applications**

**You may exercise the Devolved Power to accept an application for Advice and Assistance by post from a Client where there is good reason to do so, but not where the Client is resident outside England and Wales and:**

- (a) **such residence is purely temporary and the Client can without serious disadvantage delay the application until he or she has returned to England and Wales; or**

**(b) the Advice and Assistance could be applied for on the same Matter by a person resident in England and Wales; or**

**(c) it is otherwise unreasonable to accept the application.**

1. Good reason for the purposes of this Rule ~~is as described~~ should take into account all factors mentioned in the Guidance to Rule 7.9 in this Part.
2. It would not be reasonable to accept a postal application on behalf of a person outside of England and Wales if the Client could be expected to attend personally in any event, for example, because of a forthcoming or regular visits to England and Wales.
3. This Rule sets out the only circumstances in which you may accept an application for Advice and Assistance from a Client outside England and Wales, except for Police Station Advice and Assistance.

## **2.2 Attendance on Client's Behalf**

**Where a Client cannot for good reason attend on you in order to apply for Advice and Assistance, that Client may authorise another person ('the authorised person') to attend on their behalf.**

**The authorised person must provide you with the information and satisfactory evidence in support necessary to assess whether the Client meets the financial criteria. The authorised person must attend on you personally to make the application.**

**Save where the Advice and Assistance is provided to a Client whose physical or mental disability renders it impracticable to attend the office, no member, associate or employee of your firm (or family member of such member, associate or employee) may act as an authorised person for the purposes of this Rule.**

**You may not accept an application for Advice and Assistance from an authorised person on behalf of a Client unless that Client is, at the time when the authorisation is given, either present in or resides in England and Wales.**

1. Good reason for the purposes of this Rule ~~is as described~~ should take into account all factors mentioned in the Guidance to Rule 7.9 in this Part.
2. The reason relied upon must always be noted by you and kept on the file.
3. If the Client provides written authority, a copy should be kept by you. The form should be signed by the authorised person on the Client's behalf and should be annotated indicating the full name of the person signing and to make it clear that the application signed was in accordance with this Rule.
4. If the authorisation was by telephone, an attendance note should be made and retained on file. The form should be signed by the authorised person on the Client's behalf and should be annotated indicating the full name of the person signing and to make it clear that the application signed was in accordance with this Rule.
5. Work in respect of the authorisation should not be included in your Claim for costs.

## **C5 References to Revenue and Customs**

### **General Criminal Contract Specification**

Amend Part B 3.5 as follows:

#### **3.5 Investigations by Non-Police Agencies**

**You may not claim for an attendance for providing Police Station Advice and Assistance if you attend a Client making a voluntary attendance in connection with an investigation by an agency other than the police unless a Constable is present.**

1. You may be entitled to claim this work as Advice and Assistance if the Client meets the Qualifying Criteria.
2. An interview with a Volunteer may take place in a location other than a Police Station e.g. the person's home, or the offices of an investigating agency. The crucial element of the definition of "Police Station" is that a Constable must be present. A Constable includes an officer of HM Revenue and Customs ~~and Excise~~, a British Transport Police officer or any official with a power of arrest conferred by virtue of his or her office. It does not, however, include any other investigators, e.g. government departments, local authority, Post Office or, SFO ~~or Inland Revenue Fraud Investigators~~ even if they have power to search premises or are required by section 66(9) of the Police and Criminal Evidence Act 1984 (PACE) to have regard to the PACE Codes of Practice. The provisions of PACE apply to all non-police investigators, including government departments, such as the DTI, as well as the Post Office, ~~SFO~~ and others.
3. If you provide Advice and Assistance to a Volunteer in circumstances where a Constable is not present, then you will not be entitled to claim for the work as Police Station Advice and Assistance. The work may be remunerated as Advice and Assistance if the Client satisfies the Qualifying Criteria, otherwise you may be paid on a private client basis.

## **D Amendments to Criminal Guidance Manuals Only**

### **D1 Work done in connection with the Proceeds of Crime Act 2002**

#### **Criminal Bills Assessment Manual**

Insert the following as paragraph 2.5 and renumber subsequent paragraphs accordingly:

#### **2.5 Work done in connection with the proceeds of Crime Act 2002**

##### **Introduction**

1. Work done by a supplier to comply with the Proceeds of Crime Act (POCA) 2002 and the money laundering regulations generally (i.e. work done that is not client-specific), is administrative work and as such is not claimable from the legal aid fund.
2. Similarly, internal consultations (e.g. between a fee-earner and the firm's money-laundering compliance officer) would be administrative work under general cost assessment principles.
3. The situation is more complex in situations where the work is client-specific and is not an internal consultation. This is work that is directly involved in the provision of contracted legal services to the client and so may be claimed from the fund, subject to reasonableness and the views below as to what may be allowed against the Fund. This work may include:
  - (a) Procedures for checking the client's identity;
  - (b) Providing advice to the client on the effect of the money laundering laws;
  - (c) Taking further instructions where the solicitor has knowledge or is suspicious that a money laundering offence may have taken place;
  - (d) Considering whether to make a report to National Criminal Intelligence Service (NCIS);
  - (e) Reporting to NCIS where appropriate;
  - (f) Applying to the court for guidance;
  - (g) Considering whether the firm can continue to act for the client in the circumstances;
  - (h) Considering how to advise the client without 'tipping off'.

##### **Checking identity and making a risk assessment**

4. In identifying whether someone is likely to be involved with the proceeds of crime, the Financial Services Authority recommends that advisers undertake a risk assessment and high risk businesses are identified as any that involve an intensive use of cash, eg. plant hire, restaurants, night clubs, dry cleaning, building, plumbing, electrical or decorating services, mini cabs and market traders. Whilst this does not

mean that individuals who have these trades/are employed in these businesses are guilty of offences, it is the higher use of cash transactions that might lead to some monies being received that might be proceeds of crime.

5. Checking the identity of a client is a pre-instruction procedure whereby the solicitor must ensure they obtain proof of the client's identity. This procedure was in place prior to the new money laundering regulations and is not new to legal advisers. The cost of this procedure will be borne by the supplier in any event, as it is a preliminary step to determine whether instructions can be accepted from that client.

#### **Advice to the client about the solicitor's responsibilities under POCA**

6. To what extent these costs are chargeable will depend on why the work is being done and when. The Law Society recommends that solicitors change their client care letters to explain the law in this area so that the client understands at the outset what steps can be taken and that when taken they are directly chargeable to the client. It would be an amendment to the firm's standard client care letter and should not form a separate letter. The Law Society advises that the explanation should be in general terms without reference to the client's particular circumstances.
7. After initial instructions are received there may be points at which the solicitor and client spend time on POCA issues, for example, considering another party's finances. Such time is chargeable to the Fund, subject to the reasonableness of the time spent.

#### **Taking further instructions on whether an offence has been or will be committed, considering whether to make a NCIS report, making a report to NCIS**

8. The firm may be receiving monies from (or otherwise becoming concerned in financial arrangements) with the client or someone else – common examples would be:
  - (a) transactions or settlements during the case
  - (b) private payment for legal services.
9. Reflecting on whether an offence has been committed and what steps to take may be driven by a number of reasons, including
  - (a) to avoid the solicitor committing the offence of failing to disclose;
  - (b) to determine whether the client's or someone else's assets are criminal property in the context of assessing financial eligibility;  
or
  - (c) to obtain consent from NCIS where the firm is to receive monies from (or otherwise become concerned in financial arrangements) with the client or another.

10. If the purpose of the work is to consider how to avoid an offence by the solicitor of failing to disclose, it is **not allowable** against the fund. This work does not benefit the client, and its performance has no effect on the question of whether the firm can continue acting.
11. In contrast, if the firm has made a report to NCIS and has to also consider whether it can continue acting and how to advise without ‘tipping off’, this work would be claimable, subject to reasonableness.
12. If the purpose of the work is to determine whether the client’s or someone else’s assets are criminal property in the context of applying financial eligibility criteria, it is **not claimable**. Work done in the context of applying financial eligibility criteria is not claimable.
13. If the purpose of the work is to obtain a consent from NCIS (and therefore a defence to substantive money laundering offences) because the firm is to receive monies from or otherwise concerned in suspected financial arrangements, it is **claimable if** the transaction or settlement is in the context of the case. This work can be properly described as directly involved in the provision of contracted legal services, as a necessary part of the process.
14. If the reason for receiving monies or becoming concerned in arrangements is the collection of private payment for legal services, then by definition it is nothing to do with the Commission and is therefore **not claimable**.

**Considering whether the firm can continue to act and whether ‘tipping off’ has been committed and seeking guidance from the Court**

15. Any application for an adjournment within proceedings is generally within the scope of the Representation Order. If a firm has to seek directions and guidance from the Court as to whether or not they should continue to act as the client’s solicitor, this will fall within the scope of proceedings. Whilst this is not a usual step, in the sense that it is not common within the proceedings, it arises out of the solicitor’s professional obligation to appear as they are on the court record as the acting solicitor. It is anticipated that directions would only be sought where there was a pending hearing and the solicitor was unsure whether to continue to act. In such cases, this is client specific work and therefore **claimable**.
16. If, however, the reference to the Court is to seek the Court’s guidance on whether or not the solicitors should report to NCIS, the driver for the application is the firm’s position and is therefore not within the proceedings and not client specific and therefore **not claimable**.
17. Whilst considering whether the firm can continue to act is client specific work, and will be allowed subject to reasonableness,

considering whether the firm has ‘tipped off’ or making an application directly to the Court in respect of the firm’s own position is not client specific and therefore **not claimable**.

### **Complying with Production Orders**

18. Once NCIS has conducted an investigation the Assets Recovery Agency (ARA) may decide to initiate proceedings. This can include a production order served on a firm for the release to ARA of client documentation.

19. Whether this is chargeable will depend on the funding position. If the client is a former client, with no current relationship existing between client and solicitor, the work in complying with the order will be borne by the firm. Where however the client is a current client with the benefit of public funding, compliance with the order would be client specific and therefore **claimable**.

## **D2 Video links**

### **Criminal Bills Assessment Manual**

Amend paragraph 2.19 as follows:

#### **2.19 Video Links**

1. The Crime and Disorder Act 1998 permits certain pre-trial hearings in the magistrates’ court to take place via live video link between the court and prison. The court has discretion over whether hearings should be conducted via a link. These measures have been piloted in certain areas and are likely to be rolled out nationally over time. The link saves the cost of transporting the defendant to court and the consequential security issues. Consultation booths are available at the court and the prison to enable conferences to take place between the solicitor and client before or after a video link hearing.

2. Only certain courts have such facilities and in non-urban areas this may mean that defence solicitors have to travel further if a case is transferred to a “video conference” court. There is likely to be additional waiting time and more prison visits may be required. In appropriate circumstances, the use of local agents should be considered by the solicitor. The assessor shall have regard to the availability of video links in the area before deciding whether or not an agent should have been used (see section 4.18). On assessment of such claims, existing guidance should be applied, i.e. Points of Principle CRIMLA 21 (see paragraph 2.8.10) and CRIMLA 34 (see section 2.12).

3. Video links may also be installed at suppliers’ offices. The costs of installation and rental of the telephone line are not client-specific and may not therefore be claimed from us. The time spent on a conference with a client conducted by video link may be claimed insofar as it is reasonable. If

individual call charges are paid for the conference, then such charges are considered administrative overheads and may not be claimed as a disbursement.

### **3 Defendants' attendance: reminder letters**

#### **Criminal Bills Assessment Manual**

Insert the following at the end of paragraph 2.7:

#### **Defendants' attendance: reminder letters**

32. The LSC is currently engaged with partner CJS agencies in an attempt to reduce the number of ineffective hearings caused by the non-attendance of defendants. Following discussions within the inter-agency Defendant Attendance Steering Group, it has been agreed that solicitors should be encouraged to remind their client of an impending court appearance and that this reminder may take the form of a telephone reminder or a letter.

33. Therefore, from 3 October 2005, where a solicitor telephones their client (or writes a letter) reminding the client of an impending court appearance, the solicitor may claim the standard rate for the telephone call or letter. This reminder telephone call / letter is in addition to the current requirement to inform the client of the next court hearing (as required by the Specialist Quality Mark standard F1.2.)

34. The reminder call (or letter) does not need to take place on a specific day (e.g. the day before the court appearance) but should take place between the date that the client is first informed of the next court hearing and the actual date of the hearing (including the day of the hearing in the event of a telephone call.)