

**Consultation on Proposed Amendments to the
General Civil Contract (Solicitors), General Civil Contract (NfP) and
General Criminal Contract (Solicitors) to Implement the Proposed
Reform of the Legal Service Commission's Applications and
Appeals Procedures
October 2006**

The following proposed amendments are those referred to in the consultation paper "Reform of the Legal Service Commission's Applications and Appeals Procedures" which was published on [insert date]. The proposed amendments should be read in the context of the consultation paper.

General Civil Contract (Solicitors) Specification

At the end of the Introduction in a new paragraph headed "Interpretation"

Add the following:

To reflect amendments to appeals procedures, with effect from 1st October 2006 in this Specification the following terms have the following meanings:

"Costs Committee" means "Independent Costs Assessor" and "Assessor" shall have the same meaning

This amendment shall not affect the sensible interpretation of the Specification for cases or situations that are in a process beginning before, but ending after, the date this amendment came into effect.

1.14 Loss to the Fund

Where you have failed to comply with any provisions of the contract documentation or any applicable legislation and as a result of your default or omission, the fund has incurred loss, the ~~Costs Committee~~ Assessor may, on referral of the matter by the Regional Director, refuse payment on our behalf of all or part of your costs (including any disbursements incurred) in connection with the matter in respect of which such failure occurred until the loss to the fund has been restored.

1. This rule covers situations where a failure to perform the work in accordance with this Contract, the regulations or guidance has led to financial loss to the fund.
2. An example would be in a certificated case where you have failed to take the steps required to protect the statutory charge.

2.16 Appeals

If you are dissatisfied with any decision of the ~~Regional Director~~ as to the Assessment of the costs of Controlled Work, you may appeal to the ~~Costs Committee~~ Assessor.

The appeal must be made in writing (setting out full reasons) within 28 days of notification of the decision, and must be accompanied by the file.

The ~~Regional Director~~ will only extend the 28-day time limit ~~by a further 14 days~~ where you have requested an extension for good reason within 21 days. Any extension of the time limit will be for a maximum further 14 days.

Failure to comply with any of the above requirements means that you accept the decision of the ~~Regional Director~~ and lose your right to dispute it.

Where an appeal is to proceed then the ~~Regional Director~~ will endeavour to list it before the ~~Costs Committee~~Assessor within a reasonable period and:

- (a) the ~~Regional Director~~ may make a written reply to your full reasons up to 21 days before the listed date.
- (b) you may respond to this reply in writing up to seven days before the listed date.

Any further representations or evidence may only be admitted with leave of the ~~Committee~~Assessor, who will require good reason.

Subject to the following provisions, the appeal shall be dealt with by the Assessor on a documents only basis.

There is no general right for ~~e~~Either party ~~may~~to attend and to be represented on the appeal. However, if either party considers that there are exceptional circumstances which mean that concerns or issues cannot be addressed in writing, they may make a written request (setting out full reasons) for an oral hearing to the Assessor at the same time as (in your case), you submit your written appeal and (in the case of the Director) at the same time as he makes any written reply (or, where no written reply is made, during the period allowed for making such reply) provided that notice is given to the other party and the Costs Committee.

The Assessor will consider the request and notify both parties of his decision.

If neither party has made a request for an oral hearing but the Assessor believes that his review of some or all of the issues under the appeal cannot be concluded properly without hearing oral submissions, he will notify the parties of this. If you do not wish to make oral submissions, the Assessor will deal with the appeal on a documents only basis. If you do wish to attend the appeal to make oral submissions (either in person or through a representative) in order to exercise that right, you must notify us and the Assessor. In these circumstances we shall also have a right of attendance and representation at the appeal and we shall confirm whether or not we intend to exercise that right.

For the avoidance of doubt, ~~t~~The ~~Costs Committee~~Assessor may give procedural directions as to the determination of the appeal whether the appeal is to be dealt with on a documents only or an oral hearing basis.

On appeal, the ~~Costs Committee~~Assessor shall review the Assessment whether by confirming, increasing or decreasing the amount assessed. The ~~Costs~~

~~Committee Assessor~~ may apply ~~their~~his findings generally across files outside the sample before ~~the~~him under the terms of Rule 2.15. However, no such decision shall apply to any completed Assessments which you have not appealed within the time limit.

Where in dealing with an appeal on a documents only basis the Assessor identifies new issues (i.e. issues which have not been raised by either party under the appeal) the Assessor will, as he considers appropriate in the circumstances, either:

- (a) adjourn the appeal and seek representations from the parties before making his decision; or
- (b) remit the matter back to the Director for a new decision.

1. Your appeal may be in relation to the individual Assessments, or on the basis that you disagree with the application of Rule 2.15, or both. On appeal, the ~~Costs Committee Assessor~~ will consider the Assessments on any individual files before ~~the~~him. Where the findings ~~they~~he makes on those files revises the average percentage reduction on the sample of files assessed by the regional office, then unless the ~~Committee Assessor~~ directs otherwise, that revised average will apply to your to unassessed files under the terms of Rule 2.15. However, the ~~Committee Assessor~~ has power to make ~~its~~his own findings under Rule 2.15 and may substitute such findings for those of the ~~Regional Director~~.
2. If we do not receive an application for an appeal together with the relevant files within the required period, the Assessment stands. If you apply for an appeal within the 28-day, or any extended, period but a relevant file is not sent within that period, the Assessment on that file stands. Where an Assessment stands, this means that you will have accepted the decision of the ~~Regional Director~~ and waived your right to appeal.
3. Where within 21 days (i.e. at least seven days before the expiry of the 28-day period) you request an extension to that deadline, the ~~Regional Director~~ will grant you a further ~~14 days period~~ beyond the 28 days if there was 'good reason' for the request. Good reason in this context would include a situation where for example, a sole practitioner is on holiday at the relevant time, or it is necessary to contact a third party (e.g. a fee earner that has left a firm). We will not grant such an extension ~~unless~~where the request was received within 21 days or where there was no good reason for the request. In any event, any and the extension granted will not in any event go beyond ~~the~~a further 14 days.
4. We will return the files to you either before or at the same time as notifying you of the Assessment results. You will not be deemed to have been notified of the results of the Assessment (and therefore your time limit for appealing will not start to run) until we have also returned the files.
5. The ~~Regional Director~~ may make a written reply to your appeal which must be sent to you at least 21 days before the date fixed for the ~~Committee Assessor~~ to deal with the appeal. You have the right to respond to this in writing up to seven days before the date fixed for the ~~Committee~~ appeal. The ~~Committee Assessor~~ has discretion to accept further representations outside of these two time limits but will only do so in exceptional circumstances if he considers there is good reason.
6. The written representations (appeal, reply and response) ~~should~~ must set out all matters that the parties wish the ~~Committee Assessor~~ to consider. Where an oral hearing takes place (see below) then permission of the ~~Committee Assessor~~ will be

required to raise any new issues not set out in the written representations; ~~In~~ ~~exercising their~~ ~~his~~ ~~discretion~~ the ~~Committee~~ ~~Assessor~~ will consider whether there was good reason why the issues could not have been raised previously. If the Assessor concludes that no good reason exists, he will not permit the issues to be raised. However, the ~~Committee itself~~ ~~Assessor himself~~ can raise ~~additional or~~ new issues in exercise of ~~its~~ ~~his~~ discretion to increase, confirm or reduce the Assessment. If the Assessor identifies new issues when dealing with an appeal on a documents only basis then he will, in his discretion, either adjourn the appeal to seek representations (reply and response) from the parties or remit the matter back to the Director for a new decision.

7. ~~There is no general right for either you or the Regional Director to have an oral hearing attend or be represented on~~ the appeal. If either party considers that there are exceptional circumstances which mean that concerns or issues cannot be addressed in writing, they may make a written request (setting out full reasons) for an oral hearing to the Assessor. In your case you must make the request you wish to attend, you must give notice when you submit your written appeal (i.e. within 28 days of receiving the Costs Assessment decision.) In our case, the Director must make his request (setting out full reasons) at the same time as he makes any written reply (or, where no written reply is made, during the period allowed for making such reply). The Assessor will consider the request and, before making a decision on the request (or in the case of a request which he initiates before he makes that request) he may in his discretion attempt to deal with the issues giving rise to the request by telephoning, emailing or writing to the parties. Where the Assessor's decision is to grant the request for an oral hearing, the Director will endeavour to arrange the oral hearing within a reasonable period. Where the Assessor grants a request but decides to limit oral submissions to particular points, he will specify those points in writing and notify the parties accordingly. If the Assessor's decision is to refuse the request for an oral hearing he will give written reasons for his refusal. ~~If we wish to attend, we must give notice when the agenda is sent out. We will not exercise our right to attend in every case, and will only do so in any event~~ An oral hearing will only be held where you have indicated that you will attend to make oral submissions either in person or through your representatives. If you have indicated that you will attend the hearing we will also have the right to attend and shall confirm whether or not we intend to exercise that right. Our representative will not be present during any 'in camera' deliberations by the Committee.
8. For the avoidance of doubt, nothing in this Rule relates to the presence at the Committee of a clerk supplied by the regional office to carry out administrative functions under the Review Panel Arrangements 2000.

2.17 Costs Appeals Committee

At any point after the Director's Assessment (but no later than 21 days following receipt of an Assessor's decision in relation to that Assessment) if you have appealed the Assessment ~~If you remain dissatisfied with the decision of the Costs Committee on an appeal you may within 21 days of receipt of notification of the decision, apply in writing to a Costs Committee~~ **the Director to certify for determination of a Point of Principle of General Importance. Your application must set out the exact wording of the Point (or Points) of Principle of General Importance that you wish the Costs Committee to certify to be determined.**

Within seven days of receipt, the Director will forward your written application to the LSC's Legal Director for permission for your application to be referred to the Costs Appeals Committee. The granting or refusal of permission to proceed will be determined on the papers only.

The LSC's Legal Director will make a decision on whether to grant or refuse permission to proceed to the Costs Appeals Committee within 14 days of receipt of your application. If the LSC's Legal Director refuses permission to proceed, then that decision will be referred directly to the Chair of the Costs Appeals Committee. The Chair of the Costs Appeals Committee will either approve the LSC's Legal Director's decision or give permission to proceed.

~~The Costs Committee will determine the application to certify a Point of Principle of General Importance on the papers only.~~

Where either the LSC's Legal Director or the Chair of the a Costs Appeals Committee grants permission to proceed, your application will then be referred certifies a Point of Principle of General Importance you may, within 21 days of receipt of notification, apply in writing to the Costs Appeals Committee for it to determine that Point of Principle.

If you do not comply with the above time limits (or any extended period agreed by us), you thereby accept the decision of the Director or Assessor (as appropriate) first Costs Committee and lose your right to dispute it.

~~We will extend the time limits for applying to the Costs Appeals Committee only if you request an extension before the time limit expires and there are exceptional circumstances.~~

At any point after making his Assessment (but no later than 21 days following receipt of an Assessor's decision in relation to that Assessment) if the relevant Regional Director is dissatisfied with the decision of a Costs Committee on an appeal brought by you, the Regional Director may within 21 days of that decision certify a Point of Principle of General Importance and apply in writing to the Costs Appeals Committee for them to determine that a Point of Principle of General Importance. In addition, at any time (but no later than 21 days following the other parties' receipt of his decision) the Assessor may apply in writing to the Costs Appeals Committee for them to determine a Point of Principle of General Importance. Notice of such appeal will be served on you, and you may, within 21 days of receipt of such notice, make written representations to the Cost Appeals Committee.

On considering an application under this Rule, the Costs Appeals Committee will either:

- (a) determine any Point of Principle of General Importance referred to it following the granting of permission by either the LSC's Legal Director, Chair of the Costs Appeals Committee or Director or referred to it by the Assessor, certified by the Costs Committee or Regional Director and, where appropriate, amend any of the Assessments of the Costs Committee Assessor to give effect to this determination, or refer the matter back to the Costs Committee Assessor for it him to do so; or

- (b) **determine that there is no Point of Principle of General Importance raised by the application before it and refuse the application accordingly.**

The Costs Appeals Committee will usually determine the application on the papers before it but may exceptionally at its discretion grant a request by an appellant to attend and/or be represented on the appeal, provided that the same right is granted to the other party to the appeal.

1. This Rule gives you the right to seek a determination on a Point of Principle of General Importance when dissatisfied with the ~~Costs Committee's~~ Director or Assessor's decisions on Assessments of your costs. Since it is essential that there is consistency of interpretation across all areas the rule also allows the ~~Regional Director or Assessor~~ to refer the matter to the Costs Appeals Committee where in his or her view a Point of Principle of General Importance has been raised by a review which requires a definitive decision. However the ~~Regional Director~~ will require the consent of the LSC's Legal Director (or the Chair of the Costs Appeals Committee where they did not approve the LSC's Legal Director's decision to refuse permission to proceed) (who will have to agree that there is a general principle raised by the case) before making the referral.
2. Clause 3.2 of the Standard Terms requires compliance with Points of Principle of General Importance.
3. The general principle which should be followed is that where a point is apparent at the outset of the Assessment process, an application for determination of a Point of Principle of General Importance must be sent to the Director at the same time as the appeal of the Director's Assessment is made.
4. Where permission has been given for your application to proceed, we will endeavour to arrange for the Costs Appeals Committee to determine it within a reasonable period.
5. The Costs Appeals Committee (or ~~Costs Committee~~ Assessor hearing an appeal under Rule 2.16) will adjourn an appeal hearing only for "good reason". If a party has given notice that they wish to attend or be represented on the appeal and then seek an adjournment, a Committee may determine the appeal in their absence unless they are satisfied that there is good reason to grant an adjournment.
6. Difficulty in attending a hearing because of other commitments will not normally be "good reason". However, if the relevant member of your personnel is involved in a trial on, or very close to, the appeal hearing date that will normally be good reason (unless you were aware of this commitment and the Committee considers that you should have contacted us earlier to agree a fresh date for the hearing of the appeal). Unexpected illness will normally be accepted as "good reason", if supported by a medical certificate.

2.18 Basis of Assessments, Reviews and Appeals

Any Assessment made by the ~~Regional Director~~ under Rule 2.14, any appeal considered by the ~~Costs Committee~~ Assessor under Rule 2.16 and any application considered by the Costs Appeals Committee under Rule 2.17 shall take place on the basis of determining, on the Standard Basis, whether the work was actually and reasonably done and disbursements actually and reasonably incurred in accordance with the requirements of the Contract and Guidance and of applying the remuneration rates set out in Annex A

to the Contract Schedule. Allowance shall only be made for work claimed which is supported by appropriate evidence on the file at the time the claim was submitted.

1. Determining reasonableness will involve, in general terms, taking into account all the relevant circumstances of the case including the nature, importance, complexity or difficulty of the work and the time involved; and allowing a reasonable amount of time in respect of all Controlled Work actually and reasonably done in accordance with terms of this Contract (including in particular the Rules and Guidance in this Specification).
2. The relevant remuneration rates will then be applied to the time allowed and the resulting sum will be added to any disbursements allowed and to any VAT to produce a figure for the costs of the case. Allowance will not be made for work which was not evidenced on the file at the time the claim was made in the form of timed and dated attendance notes, and where appropriate by relevant documentation, such as copies of documentation drafted or perused.

6.3 Review of Costs in Specified Family Proceedings

Where you or counsel are dissatisfied with any decision of the ~~Regional~~ Director under Rule 6.2 then you may seek a review of that decision and the rights of review and subsequent appeal shall be the same as those set out in paragraphs (4) to (8) inclusive of regulation 105 of the Civil Legal Aid (General) Regulations 1989.

1. The relevant provisions of the Civil Legal Aid (General) Regulations 1989 are saved by the Access to Justice Act 1999 (Commencement no. 3 and Transitional Provisions and Savings) Order 2000.
2. This Rule gives you the right to seek a review by the Costs Committee of any Assessment and a subsequent right of appeal to the Cost Appeals Committee if a point of principle of general importance is certified.

General Criminal Contract (Solicitors) Specification

Part A Scope and Structure of Contract Work

At the end of the Introduction, add the following:

To reflect amendments to appeals procedures, with effect from 1st October 2006 in this Specification the following terms have the following meanings:

“Costs Committee” means “Independent Costs Assessor” and “Assessor” shall have the same meaning

This amendment shall not affect the sensible interpretation of the Specification for cases or situations that are in a process beginning before, but ending after, the date this amendment came into effect.

5.2 Prior Authorities

Where you consider it necessary for the proper conduct of Criminal Proceedings, within the scope of this Contract, in the magistrates' court or High Court, for costs to be incurred under a Representation Order by taking any of the following steps:

- (a) obtaining a written report or opinion of one or more experts;
- (b) employing a person to provide a written report or opinion (otherwise than as an expert);
- (c) obtaining any transcripts or recordings, including police questioning of suspects;
- (d) in magistrates' courts only, where a Representation Order provides for the services of Solicitor and Counsel, instructing a Queen's Counsel alone without junior Counsel; or
- (e) performing an act which is either unusual in its nature or involves unusually large expenditure,

you may apply to the ~~Regional~~ Director for prior authority before the expenditure is incurred.

If prior authority is refused or partially refused (i.e. the full amount sought is not granted) by the ~~Regional~~ Director, the application will automatically be referred to the ~~Costs Committee~~ Assessor. If the ~~Costs Committee~~ Assessor refuses an application, there is no right of appeal but a fresh application may be made at any time.

The effect of obtaining an authority is that no question as to the step taken or the amount authorised will be raised on Assessment at the conclusion of the proceedings, unless you knew or ought reasonably to have known, before incurring the costs, that the purpose of the authority had failed or become irrelevant or unnecessary.

1. An application under this Rule must be made by application to the ~~Regional~~ Director using the relevant form approved by us and applying any relevant Guidance.
2. Authority cannot be granted retrospectively. Any application must be made in advance of the relevant expenditure being incurred.
3. Applying for authority is not mandatory. If permission to incur the expenditure is not sought or refused, the costs may still be allowed on Assessment if the expenditure was reasonably incurred. The same principle applies if the amount authorised is exceeded. If an application is refused or partially granted, it will automatically be referred to the ~~Costs Committee~~ Assessor. You may make a further application to us at any time. Such applications are only likely to be granted if there has been a change of circumstances or fresh information is provided in support.
4. Amounts authorised will usually be in accordance with guideline rates issued from time to time by the ~~Lord Chancellor's~~ Department Constitutional Affairs. The authority will specify the type of expenditure authorised, a maximum amount and may specify a maximum rate. This authority must be submitted with any Claim for payment.

5. Authority will be granted if the expense is necessary and reasonable having regard to the nature of the proceedings. The application may be granted subject to such terms and conditions as are appropriate.
6. Authority will be refused where the application is for tendering expert evidence or the reports in question have been or could be ordered by the court in consideration of a disposal under the Mental Health Act or probation order with treatment and would thus be payable out of central funds.
7. Authority will be refused where the application is in respect of a medical assessment for which it would be reasonable to expect alternative funding, e.g. through the NHS or Home Office, to be used.
8. Authority will be refused for photocopying done “in house” which is an office overhead, unless the circumstances are unusual, or the documents to be copied are unusually numerous in relation to the nature of the case.
9. Authority will be refused where the application is for a conference with Counsel to obtain Counsel’s written opinion (unless Counsel is instructed as an expert).
10. Authority will be refused where the application is to attend a distant court. This is a matter for costs Assessment.
11. Authority will be refused where the application is to cover witness expenses.
12. The circumstances in which you may be paid other than under this Contract where a prior authority is refused are set out in Part C, Rule 1.20 of this Specification.

7.7 Unnecessary Expenditure of Public Funds

Where you have failed to comply with any provisions of the Contract or any applicable legislation and as a result of your default or omission, there has been a loss to public funds, the ~~Costs Committee~~ Assessor may, on referral of the matter by the Regional Director, refuse payment on our behalf of all or part of your costs (including any Disbursements incurred) in connection with the matter in which such failure occurred, until the loss has been restored.

1. This Rule covers situations where a failure to perform the work in accordance with this Contract, the Regulations or Guidance has led to financial loss to public funds.

1.11 Appeals

If you are dissatisfied with any decision of the ~~Regional~~ Director as to the assessment of the costs of Contract Work, you may appeal to the ~~Costs Committee~~ Assessor. The appeal must be made in writing (setting out full reasons) within 28 days of notification of the decision, and must be accompanied by the file.

The ~~Regional~~ Director will only extend the 28-day time limit ~~by a further 14 days~~ where you have requested an extension for good reason within 21 days. Any extension of the time limit will be for a maximum further 14 days.

Failure to comply with any of the above requirements means that you accept the decision of the ~~Regional~~ Director and lose your right to dispute it.

Where an appeal is to proceed then the ~~Regional Director~~ will endeavour to list it before the ~~Costs Committee~~Assessor within a reasonable period and:

- (a) The ~~Regional Director~~ may make a written reply to your full reasons up to 21 days before the listed date.
- (b) You may respond to this reply in writing up to 7 days before the listed date.

Any further representations or evidence may only be admitted with leave of the ~~Committee~~Assessor, who will require good reason.

Subject to the following provisions, the appeal shall be dealt with by the Assessor on a documents only basis.

There is no general right for either party to attend and to be represented on the appeal. However, if either party considers that there are exceptional circumstances which mean that concerns or issues cannot be addressed in writing, they may make a written request (setting out full reasons) for an oral hearing to the Assessor at the same time as (in your case), you submit your written appeal and (in the case of the Director) at the same time as he makes any written reply (or, where no written reply is made, during the period allowed for making such reply) provided that notice is given to the other party and the Costs Committee.

The Assessor will consider the request and notify both parties of his decision.

If neither party has made a request for an oral hearing but the Assessor believes that his review of some or all of the issues under the appeal cannot be concluded properly without hearing oral submissions, he will notify the parties of this. If you do not wish to make oral submissions, the Assessor will deal with the appeal on a documents only basis. If you do wish to attend the appeal to make oral submissions (either in person or through a representative) in order to exercise that right, you must notify us and the Assessor. In these circumstances we shall also have a right of attendance and representation at the appeal and we shall confirm whether or not we intend to exercise that right.

For the avoidance of doubt, the ~~Costs Committee~~Assessor may give procedural directions as to the determination of the appeal whether the appeal is to be dealt with on a documents only or an oral hearing basis.

On appeal, the ~~Costs Committee~~Assessor shall review the Assessment whether by confirming, increasing or decreasing the amount assessed. The ~~Costs Committee~~Assessor may apply ~~their~~his findings generally across files outside of the sample before ~~them~~him under the terms of Rule 1.10 in this Part. However, no such decision shall apply to any completed Assessments which you have not appealed within the time limit.

Where in dealing with an appeal on a documents only basis the Assessor identifies new issues (i.e. issues which have not been raised by either party under the appeal) the Assessor will, as he considers appropriate in the circumstances, either:

- (a) adjourn the appeal and seek representations from the parties before making his decision; or

(b) remit the matter back to the Director for a new decision.

1. Your appeal may be in relation to the individual Assessments, or on the basis that you disagree with the application of Rule 1.10 or both. On appeal, the ~~Costs Committee~~ Assessor will consider the Assessments on any individual files before ~~it~~him. Where the findings ~~they~~ he makes on those files revises the average percentage reduction on the sample of files assessed by the regional office, then unless the ~~Committee~~ Assessor directs otherwise that revised average will apply to your unassessed files under the terms of Rule 1.10. However the ~~Committee~~ Assessor has power to make its own findings under Rule 1.10 and may substitute such findings for those of the ~~Regional~~ Director.
2. If we do not receive an application for an appeal together with the relevant files within the required period, the Assessment stands. If you apply for an appeal within the 28 days, or any extended, period, but a relevant file is not sent within that period, the Assessment on that file stands. Where an Assessment stands, this means that you will have accepted the decision of the ~~Regional~~ Director and waived your right to appeal.
3. Where within 21 days (i.e. at least seven days before the expiry of the 28 day deadline) you request an extension to that deadline, the ~~Regional~~ Director will grant you a further ~~14 days~~ period beyond the 28 days if there was 'good reason' for the request. Good reason in this context would include a situation where for example, a sole practitioner is on holiday at the relevant time, or it is necessary to contact a third party (e.g. a fee earner that has left the firm). We will not grant such an extension unless where the request was received within 21 days or where there was no good reason for the request. In any event, and the any extension granted will not in any event go beyond the a further 14 days.
4. We will return the files to you either before or at the same time as notifying you of the Assessment results. You will not be deemed to have been notified of the results of the Assessment (and therefore your time limit for appealing will not start to run) until we have also returned the files.
5. The ~~Regional~~ Director may make a written reply to your appeal, which must be sent to you at least 21 days before the date fixed for the ~~Committee~~ Assessor to deal with the appeal. You have the right to respond to this in writing up to seven days before the date fixed for the ~~Committee~~ appeal. The ~~Committee~~ Assessor has discretion to accept further representations outside of these two deadlines but will only do so in exceptional circumstances if ithe considers there is good reason.
6. The written representations (appeal, reply and response) ~~should~~ must set out all matters that the parties wish the ~~Committee~~ Assessor to consider. Where an oral hearing takes place (see below) then permission of the ~~Committee~~ Assessor will be required to raise any new issues not set out in the written representations; In exercising itshis discretion the ~~Committee~~ Assessor will consider whether there was good reason why the issues could not have been raised previously. If the Assessor concludes that no good reason exists, he will not permit the issues to be raised. However, the Committee itself Assessor himself can raise additional or new issues in exercise of itshis discretion to increase, confirm or reduce the Assessment. If the Assessor identifies new issues when dealing with an appeal on a documents only basis then he will, in his discretion, either adjourn the appeal to seek

representations (reply and response) from the parties or remit the matter back to the Director for a new decision.

7. There is ~~no general~~ right for either you or the ~~Regional~~ Director to ~~have an oral hearing of attend or be represented on~~ the appeal. If ~~either party~~ considers that there are exceptional circumstances which mean that concerns or issues cannot be addressed in writing, they may make a written request (setting out full reasons) for an oral hearing to the Assessor. In your case you must make the request ~~you wish to attend, you must give notice~~ when you submit your written appeal (i.e. within 28 days of receiving the costs Assessment decision.) In our case, the Director must make his request (setting out full reasons) at the same time as he makes any written reply (or, where no written reply is made, during the period allowed for making such reply). The Assessor will consider the request and, before making a decision on the request (or in the case of a request which he initiates before he makes that request) he may in his discretion attempt to deal with the issues giving rise to the request by telephoning, emailing or writing to the parties. Where the Assessor's decision is to grant the request for an oral hearing, the Director will endeavour to arrange the oral hearing within a reasonable period. Where the Assessor grants a request but decides to limit oral submissions to particular points, he will specify those points in writing and notify the parties accordingly. If the Assessor's decision is to refuse the request for an oral hearing he will give written reasons for his refusal. ~~If we wish to attend, we must give notice when the agenda is sent out. We will not exercise our right to attend in every case, and will only do so in any event~~ An oral hearing will only be held where you have indicated that you will attend to make oral submissions either in person or through your representatives. ~~If you have indicated that you will attend the hearing we will also have the right to attend and shall confirm whether or not we intend to exercise that right.~~ Our representative will not be present during any 'in camera' deliberations by the Committee.
8. For the avoidance of doubt, nothing in this Rule relates to the presence at the Committee of a clerk supplied by the regional office to carry out administrative functions under the Review Panel Arrangements 2000.

1.12 Costs Appeals Committee

At any point after the Director's Assessment (but no later than 21 days following receipt of an Assessor's decision in relation to that Assessment) if you have appealed the Assessment ~~If you remain dissatisfied with the decision of the Costs Committee on an appeal you may within 21 days of receipt of notification of the decision,~~ apply in writing to a ~~Costs Committee to certify~~ the Director for determination of a Point of Principle of General Importance. Your application must set out the exact wording of the Point (or Points) of Principle of General Importance that you wish ~~the Costs Committee to certify~~ to be determined.

Within seven days of receipt, the Director will forward your written application to the LSC's Legal Director for permission for your application to be referred to the Costs Appeals Committee. The granting or refusal of permission to proceed will be determined on the papers only.

The LSC's Legal Director will make a decision on whether to grant or refuse permission to proceed to the Costs Appeals Committee within 14 days of receipt of your application.

If the LSC's Legal Director refuses permission to proceed, then that decision will be referred directly to the Chair of the Costs Appeals Committee. The Chair of the Costs Appeals Committee will either approve the LSC's Legal Director's decision or give permission to proceed.

~~The Costs Committee will determine the application to certify a Point of Principle of General Importance on the papers only.~~

Where either the LSC's Legal Director or the Chair of the Costs Appeals Committee grants permission to proceed, your application will then be referred certifies a Point of Principle of General Importance you may, within 21 days of receipt of notification, apply in writing to the Costs Appeals Committee for it to determine that Point of Principle.

If you do not comply with the above time limits (or any extended period agreed by us) you thereby accept the decision of the Director or the Assessor~~Costs Committee~~ under Rule 1.11 and lose your right to dispute it.

~~We will extend the time limits for applying to the Costs Appeals Committee only if you request an extension before the time limit expires and there are exceptional circumstances.~~

At any point after making his Assessment (but no later than 21 days following receipt of an Assessor's decision in relation to that Assessment) If the relevant Regional Director is dissatisfied with the decision of a Costs Committee on an appeal brought by you, the Regional Director may within 21 days of that decision certify a Point of Principle of General Importance and apply in writing to the Costs Appeals Committee for it to determine a that Point of Principle of General Importance. In addition, at any time (but no later than 21 days following the other parties' receipt of his decision) the Assessor may apply in writing to the Costs Appeals Committee for them to determine a Point of Principle of General Importance. Notice of such appeal will be served on you, and you may, within 21 days of receipt of such notice, make written representations to the Costs Appeals Committee.

On considering an application under this Rule, the Cost Appeals Committee will either:

- (a) determine any Point of Principle of General Importance certifiedreferred to it following the granting of permission by either the LSC's Legal Director, Chair of the Costs Appeals Committee or Director or referred to it by the Assessor ~~by the Costs Committee or Regional Director~~ and, where appropriate, amend any of the Assessments of the ~~Costs Committee~~Assessor to give effect to this determination or refer the matter back to the ~~Costs Committee~~Assessor for it him to do so; or
- (b) determine that there is no Point of Principle of General Importance raised by the application before it and refuse the application accordingly.

The Costs Appeals Committee will usually determine the application on the papers before it but may exceptionally at its discretion grant a request by an appellant to attend and/or be represented on the appeal, provided that the same right is granted to the other party to the appeal.

1. This Rule gives you the right to seek a determination on a Point of Principle of General Importance when dissatisfied with the ~~Costs Committee's~~ Director or Assessor's decisions on Assessment of your costs. Since it is essential that there is consistency of interpretation across all Regions and the Rule therefore also allows the ~~Regional~~ Director or Assessor to refer the matter to the Costs Appeals Committee where in his or her view a Point of Principle of General Importance has been raised by a review and which requires a definitive decision. However, the ~~Regional~~ Director will require the consent of the ~~Legal Services Commission's~~ Legal Director (or the Chair of the Costs Appeals Committee where they did not approve the LSC's Legal Director's decision to refuse permission to proceed) who will have to agree that there is a general principle raised by the case) before making the referral.
3. Clause 3.2 of the Standard Terms requires compliance with Points of Principle of General Importance.
4. The general principle which should be followed is that where a point is apparent at the outset of the Assessment process, an application for determination of a Point of Principle of General Importance must be sent to the Director at the same time as the appeal of the Director's Assessment is made.
5. Where permission has been given for your application to proceed, we will endeavour to arrange for the Costs Appeals Committee to determine it within a reasonable period.
6. The Cost Appeals Committee (or ~~Costs Committee~~ Assessor hearing an appeal under Rule 1.11) will adjourn an appeal hearing only for "good reason". If a party has given notice that they wish to attend or be represented on the appeal and then seek an adjournment, a Committee may determine the appeal in their absence unless it is satisfied that there is good reason to grant an adjournment.
- 7.. Difficulty in attending a hearing because of other commitments will not normally be "good reason". However, if the relevant member of your personnel is involved in a trial on, or very close to, the appeal hearing date, that will normally be good reason (unless you were aware of this commitment and the Committee consider that you should have contacted us earlier to agree a fresh date for the hearing of the appeal). Unexpected illness will normally be accepted as "good reason" if supported by a medical certificate.
8. If you seek certification of a Point of Principle of General Importance by the Costs Committee, the onus is on you to clearly identify the point sought when you submit the appeal. Failure to do so may result in your appeal being rejected pending clarification of the point sought.

1.13 Basis of Assessments and Appeals

Any Assessment made by the ~~Regional~~ Director under Rule 1.1 of this Part, any application to the ~~Costs Committee~~ Assessor under Rule 1.11 of this Part and any appeal considered by the Costs Appeals Committee under Rule 1.12 of this Part shall take place on the basis of determining on the Standard basis, whether work was actually and reasonably done and disbursements actually and reasonably incurred and whether the time spent is reasonable in accordance with the requirements of the Contract and Guidance and applying the remuneration rates set out in Part E of this Specification to each Class of Work. You must only claim for, and allowance shall only be made for, work actually and reasonably done, and

disbursements actually and reasonably incurred in accordance with the provisions of this Contract, and that is supported by appropriate evidence on the file at the time the claim was submitted. You are not entitled to claim payment for unrecorded time.

Disbursements will be assessed on the basis of determining whether they were reasonably incurred and are reasonable in amount subject to any prior authority granted.

1. Determining reasonableness will involve, in general terms, taking into account all the relevant circumstances of the case including the nature, importance, complexity or difficulty of the work and the time involved; and allowing a reasonable amount of time in respect of all Contract Work actually and reasonably done in accordance with terms of this Contract (including in particular the Rules and Guidance in this Specification). “Reasonable” means what is reasonable for the proper conduct of the case.
2. The relevant remuneration rates in Part E of this Specification will then be applied to the time allowed and the resulting sum or standard fee will be added to any Disbursements allowed and to any VAT to produce a figure for the costs of the Case. Allowance will not be made for work which was not evidenced on the file at the time the claim was made in the form of timed and dated attendance notes, and where appropriate by relevant documentation, such as copies of documentation drafted or perused.
3. We may ask you to provide an attendance note or other record of time spent. If your Claim is not supported by written evidence, then it will not be paid under the Contract.
4. When assessing Claims we will apply our published Guidance, except where it is expressly overridden by this Contract, which currently includes the Police Station and Court Duty Solicitor Costs Assessment Manual and the Criminal Bills Assessment Manual. The Commission’s published Guidance on the assessment of costs of controlled work will apply to the provision of freestanding Advice and Assistance so far as it is consistent with the terms of this Contract. You must be familiar with the contents of these manuals and any other Guidance on criminal costs Assessment produced by us and ensure that Claims are made in accordance with the published Guidance. The Guidance may be amended from time to time by us, for example, to reflect new decisions made by either the courts or the Costs Appeals Committee.