

Notice of Contract Amendments to come into force on 2 October 2006

Part 1

Amendments to the General Civil Contract (Solicitors) Specification to reflect the proposed amendments to Part B of the Funding Code Procedures

- 1 At the end of the Introduction, add the following:

Interpretation

To reflect amendments to Part B of the Funding Code Procedures, with effect from 2 October 2006, in this Specification the following terms have the following meanings

“Regional Director” means “Director”

“Funding Review Committee” and “FRC” mean “Independent Funding Adjudicator” (“Adjudicator”)

This shall not affect the reasonable interpretation of the Specification for cases or situations that are in a process beginning before, but ending after, the date this amendment comes into effect e.g. so that a decision of a “Regional Director” made before 2 October 2006, may be subject to a review by an “Adjudicator” after 2 October 2006.

- 2 Paragraph 2.1 (Application Form) – Add a new first paragraph and amend the previous first paragraph as shown below (to match the Funding Code Procedures). Show the remaining three paragraphs in ordinary type, as they are no longer Rules in the Funding Code Procedures.

Rule B2 of the Funding Code Procedures

Unless otherwise specified by the Commission, all applications for Controlled Work shall be made to the supplier.

Except as otherwise provided in this Specification, ~~you should not provide~~ Controlled Work may not be provided unless the client has attended ~~you~~ the supplier in person and completed an application on a the relevant form approved by ~~us~~ the Commission. (Rule B2.2 of the Funding Code Procedures).

- 3 Paragraph 2.2 (Attendance on a Client's Behalf) – Amend the first and fifth paragraphs as shown below (to match the Funding Code Procedures) and show the second, third and fourth paragraphs in ordinary type, as they are no longer Rules in the Funding Code Procedures.

Rule B3 of the Funding Code Procedures

Where a client cannot for good reason attend on ~~you~~ **a supplier** in order to apply for Controlled Work, that client may authorise another person (“the authorised person”) to attend on their behalf.

~~You may not accept~~ An application for Controlled Work **may not be accepted** 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~~ **the European Union**.

- 4 Paragraph 2.3 (Application from a Child) – amend the first phrase as shown below (to match the Funding Code Procedures)

Rule B4 of the Funding Code Procedures

~~You may not accept~~ An application for Controlled Work **may not be accepted** from a child unless:

- 5 Paragraph 2.4 (Application on behalf of a Child or Patient) – amend the first phrase and sub paragraph (d) of Rule 2.5.1 as shown below (to match the Funding Code Procedures)

Rule B5 of the Funding Code Procedures

~~You may only accept~~ An application for Controlled Work **may only be accepted** on behalf of a child or patient from:

- (d) in the case of a child or patient, or any other person where there is good reason why none of the persons specified in paragraphs (a)-(c) above can make the application. ~~And there is sufficient connection between the child or patient and the other person to ensure that the other person is likely to act responsibly in the interests of the child/patient and the other person has sufficient knowledge of the child or patient, the problem and the child's or patient's financial circumstances to give proper instructions to you, provided always that no application may be accepted under this Rule if made by a member, associate or employee of your firm.~~

- 6 Paragraph 2.4 (Application on behalf of a Child or Patient) add a new paragraph as shown below (to match Rule B5 of the Funding Code Procedures)

No application may be accepted under this Rule if made by a member, associate or employee of the supplier.

- 7 Paragraph 2.5 (Assessment of Means) – amend as shown below (to match the Funding Code Procedures)

Rule B6 of the Funding Code Procedures

Subject to Guidance, satisfactory evidence in support of the client’s information as to their means must be provided to you the supplier before you assess financial eligibility is assessed.

~~This Rule does not apply to Controlled Legal Representation in proceedings before a Mental Health Review Tribunal~~ services which, under regulations, are available without reference to the client’s resources.

- 8 Paragraph 2.6 (Misrepresentation) – show text as not bold (as it is no longer one of the Funding Code Procedures)
- 9 Paragraph 2.7 (Refusal of Controlled Work – Criteria) – amend as shown below (to match the Funding Code Procedures)

Rule B8 of the Funding Code Procedures

Refusal of Controlled Work – Criteria Reasons

Where you refuse an application for Controlled Work is refused on the basis that the Funding Code criteria are not satisfied, ~~or having granted an application, you or a supplier ceases to provide Controlled Work on the basis that the Funding Code Criteria are no longer satisfied or that, in the case of Legal Help or Help at Court an extension to the financial limit is not justified, then you must~~ the supplier shall give the client brief reasons for your refusal and should, where relevant, provide the client with information as to alternative ways of obtaining or funding services.

- 9 Paragraph 3.4 (Postal Applications) – amend the first phrase as shown below and substitute the words “the European Union” for the words “of England and Wales” and the word “services” for the words “Legal Help” (as Rule B7 applies to Controlled Legal Representation as well as to Legal Help – see proposed amendment No.16).

Rule B7 of the Funding Code Procedures

~~You may accept an application for Legal Help by post from a client~~ Subject to paragraph 2, an application for Controlled Work may be accepted by post where there is good reason to do so, ~~but not~~

Applications by post may not be accepted where the client is resident outside of ~~England and Wales~~ the European Union and:

- 10 Paragraph 3.6 (Upper Financial Limit)

Show as not bold (to reflect the deletion of Rule 3.2 of the Funding Code Procedures. Show the words “This Rule does not apply to any Matter for which a Fixed Fee is payable” as underlined.

- 11 Paragraph 3.7 (Previous Legal Help) amend as shown below (to match the Funding Code Procedures) (showing the final sentence not bold – as it is no longer included in the Funding Code Procedures.

Rule B9 of the Funding Code Procedures

~~Unless permitted to do so under a contract, Legal Help You may not provide~~ may not be provided to a client who has received Legal Help for the same matter from another ~~solicitor or contracted~~ supplier within the six months preceding the application, except where:

- (a) **there is a gap in time and circumstances have changed materially between the first and second occasions when the Legal Help was sought, e.g. a reconciliation which has failed; or**
- (b) **the client has reasonable cause to be dissatisfied with the service provided by the first ~~solicitor or contracted~~ supplier; or**
- (c) **the client has moved a distance away from the first ~~solicitor or contracted~~ supplier and communication s difficult; or**
- (d) **the first ~~solicitor or contracted~~ supplier has confirmed to you that they will be making no claim for payment for the Legal Help ~~or advice and assistance.~~**

When providing Legal Help in the circumstances set out in this Rule, you should record the justification for doing so on the file.

- 12 Paragraph 4.4 (Matter Start and Applications) - delete the words FUNDING CODE PROCEDURES from above the paragraph and show the text as not bold as it has been deleted from the Funding Code Procedures.

- 13 Paragraph 5.3 (Grant of Controlled Legal Representation) – show the first paragraph as not bold (as it has been deleted from the Funding Code Procedures), amend the second paragraph as shown below and add a further note (not bold as it is not a Funding Code Procedure) as set out below.

Rule B10 of the Funding Code Procedures

~~If you do~~ **a supplier does not have a devolved power to grant Controlled Legal Representation, an application for Controlled Legal Representation will be**

~~granted by the London Regional~~ may be made to the Director on a form approved by the Commission us.

NB The application must be addressed to the London Regional Office.

- 14 Paragraph 5.4 (Right of Review) – amend the last sentence of the first paragraph, and both the second and third paragraphs, and add a fourth paragraph, as shown below.

Rule B11 of the Funding Code Procedures

~~Where you refuse an application for Controlled Legal Representation is refused or a grant of or, having granted the application, subsequently withdraw Controlled Legal Representation is withdrawn by the supplier, the client may, your client has a right to seek a review of your the supplier's decision by the London Regional Director and the Funding Review Committee Adjudicator.~~

The supplier shall advise the client of any right of review under this rule.

You must keep a record of your advice on the file.

Where Controlled Legal Representation is refused by the London Regional Director either under this Rule or Rule B.10 above your the client may have that decision reviewed by the Funding Review Committee (unless the decision relates only to the client's financial eligibility).

~~A review by the Funding Review Committee Adjudicator under this Rule shall operate in the same way (with necessary modifications) as the review of a refusal or withdrawal of Certificated Work under Part C of these Procedures, save that in relation to proceedings before an immigration adjudicator or immigration appeal tribunal the review shall be on the papers only.~~

This Rule does not apply in relation to proceedings under section 103A of the nationality, Immigration and Asylum Act 2002.

- 15 Paragraph 5.5 (The Controlled Legal Representation Financial Limit) – show the text as not bold as it is no longer part of the Funding Code Procedures. Show the words “This Rule applies to mental health only” as underlined.
- 16 Paragraph 5.6 (Postal Applications) – amend as shown below

Rule B7 of the Funding Code Procedures

~~You may accept~~ Subject to paragraph 2, an application for Controlled Legal Representation may be accepted by post from a client where there is good reason to do so.

Applications by post may not be accepted where the client is resident outside the European Union and:

- (a) such residence is purely temporary and the client can without serious disadvantage delay the application until they have returned to the European Union, or
- (b) the services could be applied for on the same matter by a person resident in the European Union, or
- (c) it is otherwise unreasonable to accept the application.

1 Good reason for the purposes of this Rule will be:

- ~~(a) the circumstances set out in paragraph 2 of the Guidance to Rule 2.9; or~~
- ~~(b) where the client is outside of England and Wales (unless their absence is purely temporary and they can without serious disadvantage delay their application until they have returned to England and Wales).~~ In an immigration matter this Rule will therefore enable you to represent clients who, for example, have already been deported or have been refused entry altogether, and have a right to appeal.

Part 2

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 2 October 2006 in this Specification the following terms have the following meanings:

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

This shall not affect the reasonable 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 e.g. so that a decision of a “Regional Director” made before 2 October 2006 may be subject to review by an “Assessor” after 2 October 2006.

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 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 they make 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 their decision.

If:

- (a) neither party has made a request for an oral hearing but the Assessor believes that their review of some or all of the issues under the appeal cannot be concluded properly without hearing oral submissions; or
- (b) having considered a party's request for an oral hearing, they are of the opinion that the request should be granted

they 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.

In any case, whether or not a party has made a request for an oral hearing, if the Assessor is of the opinion that an appeal is of such complexity and / or value that it should not be considered by a single Assessor alone they may, in their sole discretion, refer the appeal to a panel of three Assessors either to deal with on a documents only basis or by way of an oral hearing. If the Assessor is of the opinion that the appeal should be dealt with by way of an oral hearing, the provisions set out in the preceding paragraph apply save that a panel of three Assessors shall deal with the appeal rather than a single Assessor alone.

For the avoidance of doubt, subsequent references in this Rule and its related guidance and in the following Rules and related guidance to "Assessor" shall include "Assessors" in cases where an appeal is dealt with by a panel of three Assessors rather than a single Assessor alone.

Further 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~~ their findings generally across files outside the sample before ~~them~~ 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 they consider appropriate in the circumstances, either:

- (a) adjourn the appeal and seek representations from the parties before making their 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 them~~. Where the findings they make 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 ~~itstheir~~ 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 not 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 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 itthey 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 theirtheir 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, they will not permit the issues to be raised. However, the Committee itself Assessor themselves can raise additional or new issues in exercise of itstheir 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 they will, in their 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 their request (setting out full reasons) at the same time as they make 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 they initiate before they make that request) they may in their 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, they 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 they will give written reasons for their 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 Assessor.

8. For the avoidance of doubt, nothing in this Rule relates to the presence at the ~~Committee~~ appeal of a clerk supplied by the regional office to carry out administrative functions under the Review Panel Arrangements 2000.
9. In all cases where an Assessor is of the opinion that an appeal is of such complexity and / or value that it should not be considered by a single Assessor alone they may, in their sole discretion, refer the appeal to a panel of three Assessors either to deal with on a documents only basis or by way of an oral hearing.

2.17 Costs Appeals Committee

~~If you remain dissatisfied with the decision of the Costs Committee on~~ At any point after the submission of an appeal to the Assessor, but no later than you may within 21 days of after receipt of notification of the Assessor's final decision, either you, the Director or the Assessor may seek certification of apply in writing to a Costs Committee to certify a Point of Principle of General Importance.

An Your application must set out the wording for certification of a the Point (or Points) of Principle of General Importance that you wish the Costs Committee to certify. The Costs Committee will determine the application to certify a Point of Principle of General Importance on the papers only. must be made as follows:

- (a) (in your case) by sending your application to the Director and, if one has already been appointed and their identity notified to you, to the Assessor. The Director will, within seven days of receipt of your application, forward that application to the LSC's Legal Director and, if an Assessor has been appointed but their identity not notified to you, to the Assessor also.

- (b) (in the case of the Director) by sending an application directly to the LSC's Legal Director and copying that application to you and to the Assessor (if appointed).
- (c) (in the case of the Assessor) by sending the application to the Director. The Director will, within seven days of receipt, send the application to the LSC's Legal Director and notify you that the Assessor is seeking certification of a Point of Principle of General Importance.

All applications for certification of Points of Principle of General Importance, whether made by you, the Director or the Assessor, must set out the exact wording of the Point of Principle of General Importance being sought and explain, in detail, the basis of the application.

Upon receipt of an application for certification of a Point of Principle of General Importance the LSC's Legal Director will decide whether the matter should progress to the Costs Appeals Committee. If the LSC's Legal Director decides that the matter should not progress to the Costs Appeals Committee for certification then they will send their reasons for refusal to the Chair of the Costs Appeals Committee for approval and, if approved, to you, the Director and where appropriate the Assessor.

If the LSC's Legal Director or the Chair of the Costs Appeals Committee consider that the matter should proceed for certification to the Costs Appeals Committee then the matter will be listed for consideration by that Committee.

Applications for certification of Points of Principle of General Importance are, unless permission to attend is granted by the Chair of the Costs Appeals Committee, considered by that Committee on a documents only basis.

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

- (a) decide whether to certify the Point of Principle of General Importance sought and / or, where appropriate, amend any of the Assessments of the Assessor to give effect to this determination, or refer the matter back to the Assessor for them 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.

You, the Director and, where appropriate, the Assessor will be notified of the decision of the LSC's Legal Director or the Costs Appeals Committee.

~~Where a Costs Committee 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 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.~~

~~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 Appeal Committee for them to determine that Point of Principle. 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 Appeal Committee will either:~~

- ~~(a) determine any Point of Principle of General Importance certified by the Costs Committee or Regional Director and, where appropriate, amend any of the Assessments of the Costs Committee to give effect to this determination, or refer the matter back to the Costs Committee for it 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 their 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 2 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 e.g. so that a decision of a “Regional Director” made before 2 October 2006 may be subject to review by an “Assessor” after 2 October 2006.

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 of 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 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 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 ~~Regional~~ Director) at the same time as they make 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 their decision.

If:

- (a) neither party has made a request for an oral hearing but the Assessor believes that their review of some or all of the issues under the appeal cannot be concluded properly without hearing oral submissions; or
- (b) having considered a party's request for an oral hearing, they are of the opinion that the request should be granted

they 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.

In any case, whether or not a party has made a request for an oral hearing, if the Assessor is of the opinion that an appeal is of such complexity and / or value that it should not be considered by a single Assessor alone they may, in their sole discretion, refer the appeal to a panel of three Assessors either to deal with on a documents only basis or by way of an oral hearing. If the Assessor is of the opinion that the appeal should be dealt with by way of an oral hearing, the provisions set out in the preceding paragraph apply save that a panel of three Assessors shall deal with the appeal rather than a single Assessor alone.

For the avoidance of doubt, subsequent references in this Rule and its related guidance and in the following Rules and related guidance to “Assessor” shall include “Assessors” in cases where an appeal is dealt with by a panel of three Assessors rather than a single Assessor alone.

Further 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 findings generally across files outside of the sample before them 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 they consider appropriate in the circumstances, either:

- (a) adjourn the appeal and seek representations from the parties before making their decision; or**
- (b) remit the matter back to the ~~Regional~~ 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~~ them. Where the findings they make 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 their 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 not 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 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 it 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 its ~~their~~ 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, they will not permit the issues to be raised. However, the Committee itself Assessor themselves can raise additional or new issues in exercise of its ~~their~~ 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 they will, in their discretion, either adjourn the appeal to seek representations (reply and response) from the parties or remit the matter back to the Regional 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 Regional Director must make their request (setting out full reasons) at the same time as they make 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 they initiate before they make that request) they may in their 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 Regional 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, they 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 they will give written reasons for their 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 Assessor.

8. For the avoidance of doubt, nothing in this Rule relates to the presence at the Committee appeal of a clerk supplied by the regional office to carry out administrative functions under the Review Panel Arrangements 2000.
9. In all cases where an Assessor is of the opinion that an appeal is of such complexity and / or value that it should not be considered by a single Assessor alone they may, in their sole discretion, refer the appeal to a panel of three Assessors either to deal with on a documents only basis or by way of an oral hearing.

1.12 Costs Appeals Committee

If you remain dissatisfied with the decision of the Costs Committee on At any point after the submission of an appeal to the Assessor, but no later than you may within 21 days of after receipt of notification of the Assessor's final decision, either you, the Regional Director or the Assessor may seek certification of apply in writing to a Costs Committee to certify a Point of Principle of General Importance.

An Your application must set out the wording for certification of a the Point (or Points) of Principle of General Importance that you wish the Costs Committee to certify. The Costs Committee will determine the application to certify a Point of Principle of General Importance on the papers only. must be made as follows:

- (a) **(in your case) by sending your application to the Regional Director and, if one has already been appointed and their identity notified to you, to the Assessor. The Regional Director will, within seven days of receipt of your application, forward that application to the LSC's Legal Director and, if an Assessor has been appointed but their identity not notified to you, to the Assessor also.**
- (b) **(in the case of the Regional Director) by sending an application directly to the LSC's Legal Director and copying that application to you and to the Assessor (if appointed).**
- (c) **(in the case of the Assessor) by sending the application to the Regional Director. The Regional Director will, within seven days of receipt, send the application to the LSC's Legal Director and notify you that the Assessor is seeking certification of a Point of Principle of General Importance.**

All applications for certification of Points of Principle of General Importance, whether made by you, the Regional Director or the Assessor, must set out the exact wording of the Point of Principle of General Importance being sought and explain, in detail, the basis of the application.

Upon receipt of an application for certification of a Point of Principle of General Importance the LSC's Legal Director will decide whether the matter should progress to the Costs Appeals Committee. If the LSC's Legal Director decides that the matter should not progress to the Costs Appeals Committee for certification then they will send their reasons for refusal to the Chair of the Costs Appeals Committee for approval and, if approved, to you, the Regional Director and where appropriate the Assessor.

If the LSC's Legal Director or the Chair of the Costs Appeals Committee consider that the matter should proceed for certification to the Costs Appeals Committee then the matter will be listed for consideration by that Committee.

Applications for certification of Points of Principle of General Importance are, unless permission to attend is granted by the Chair of the Costs Appeals Committee, considered by that Committee on a documents only basis.

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

- (a)decide whether to certify the Point of Principle of General Importance sought and / or, where appropriate, amend any of the Assessments of the Assessor to give effect to this determination, or refer the matter back to the Assessor for them 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.**

You, the Director and, where appropriate, the Assessor will be notified of the decision of the LSC's Legal Director or the Costs Appeals Committee.

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 their 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.
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 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.
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 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.
7. If you seek certification of a Point of Principle of General Importance by the Costs Appeals 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.

General Civil Contract (NfP) 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 2 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 shall not affect the reasonable 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 e.g. so that a decision of a regional office made before 2 October 2006 may be subject to review by an "Assessor" after 2 October 2006.

Appeal Against Assessment

6.9 What can you do if you disagree with the assessment?

1. If you disagree with any assessment carried out by the regional office then you can appeal to the Costs Committee Assessor. You must do this by writing (setting out full reasons and accompanied by the file) to the Regional Director within 28+ days of being notified of ~~his or her~~their decision.
2. The Director will only extend the 28-day time limit 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 assessment and lose your right to dispute it.
23. The ~~Costs Committee~~ Assessor can confirm, increase or decrease the amount of time or money assessed. The ~~Committee~~ Assessor will be hearing the matter afresh, and can therefore reach ~~its~~ their decision for different reasons than the regional office.
4. Where an appeal is to proceed then the Director will endeavour to list it before the Assessor within a reasonable period and:
 - (a) the Director may make a written reply to your full reasons up to 21 days before the listed date; and
 - (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 Assessor, who will require good reason.
53. Appeals to an Assessor are usually considered on a documents only basis. There is no general right for ~~e~~Either you or we ~~can~~ to attend and to be represented on the appeal. However if either you or we consider that there are exceptional circumstances which mean that concerns or issues cannot be addressed in writing, that party 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 they make any written reply (or, where no written reply is made, during the period allowed for making such reply).

6. The Assessor will consider the request and notify both parties of their decision. If:
 - (a) neither party has made a request for an oral hearing but the Assessor believes that their review of some or all of the issues under the appeal cannot be concluded properly without hearing oral submissions; or
 - (b) having considered a party's request for an oral hearing, they are of the opinion that the request should be granted
they 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. Where we do exercise our right to attend, the purpose of our attendance will be to respond, during the hearing, to any request for clarification of our decision by the Assessor or to any representations made by you. Our representative will not be present during any deliberations by the Assessor as to their decision.
7. In any case, whether or not a party has made a request for an oral hearing, if the Assessor is of the opinion that an appeal is of such complexity and / or value that it should not be considered by a single Assessor alone they may, in their sole discretion, refer the appeal to a panel of three Assessors either to deal with on a documents only basis or by way of an oral hearing. If the Assessor is of the opinion that the appeal should be dealt with by way of an oral hearing, the provisions set out in the preceding paragraph apply save that a panel of three Assessors shall deal with the appeal rather than a single Assessor alone.
~~provided that the other party and the Costs Committee are informed in advance. If you wish to attend, you must tell us when you submit your written appeal (i.e. within 21 days of receiving the cost assessment decision.) If we wish to attend, we will tell you when the agenda is sent out. We will not exercise our right to attend in every case, and will generally only do so if you have indicated that you will attend the hearing. The purpose of our attendance will be to respond, during the hearing, to any request for clarification of our decision by the Committee or to any representations made by you. Our representative will not be present during any deliberations by the Committee as to their decision.~~
84. The Costs Committee Assessor can give procedural directions as to how the appeal is conducted whether the appeal is to be dealt with on a documents only or an oral hearing basis.
5. ~~When an appeal is submitted, the regional office will prepare an agenda for the Committee. Either you or the Regional Director can make further written submissions as to the assessments prior to the hearing.~~
9. 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 you or us under the appeal) the Assessor will, as they consider appropriate in the circumstances, either:

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

6.10 Can there be an appeal against a Costs Committee decision? What if the costs rules and provisions are unclear?

- ~~1. If you remain dissatisfied with the decision of the Costs Committee on an appeal you can apply to a different Cost Committee in the same region to certify a Point of Principle of General Importance. You must do this in writing within 21 days of being notified of the Costs Committee's decision.~~
 - ~~2. If the new Costs Committee certifies a Point of Principle of General Importance you may, within 21 days of being notified of that decision, appeal in writing to the Cost Appeals Committee against the decision of the first Costs Committee.~~
 - ~~3. If the Regional Director is dissatisfied with the decision of a Costs Committee on an appeal brought by you, then he or she also has 21 days to certify a Point of Principle of General Importance and appeal in writing to the Cost Appeals Committee against the decision of the Costs Committee. A copy of the appeal will be served on you, and you will have a further 21 days thereafter to make written representations to the Cost Appeals Committee.~~
 - ~~4. The Cost Appeals Committee may reverse, agree with or amend the decision of the Costs Committee on the appeal. The Cost Appeals Committee may 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. At any point after the submission of an appeal to the Assessor, but no later than 21 days after receipt of the Assessor's final decision, either you, the Director or the Assessor may seek certification of a Point of Principle of General Importance.
 2. An application for certification of a Point of Principle of General Importance must be made as follows:
 - (a) (in your case) by sending your application to the Director and, if one has already been appointed and their identity notified to you, to the Assessor. The Director will, within seven days of receipt of your application, forward that application to the LSC's Legal Director and, if an Assessor has been appointed but their identity not notified to you, to the Assessor also.
 - (b) (in the case of the Director) by sending an application directly to the LSC's Legal Director and copying that application to you and to the Assessor (if appointed).
 - (c) (in the case of the Assessor) by sending the application to the Director. The Director will, within seven days of receipt, send the application to the LSC's Legal Director and notify you that the Assessor is seeking certification of a Point of Principle of General Importance.
 3. All applications for certification of Points of Principle of General Importance, whether made by you, the Director or the Assessor, must set out the exact wording of the Point of Principle of General Importance being sought and explain, in detail, the basis of the application.

4. Upon receipt of an application for certification of a Point of Principle of General Importance the LSC's Legal Director will decide whether the matter should progress to the Costs Appeals Committee. If the LSC's Legal Director decides that the matter should not progress to the Costs Appeals Committee for certification then they will send their reasons for refusal to the Chair of the Costs Appeals Committee for approval and, if approved, to you, the Director and where appropriate the Assessor.
5. If the LSC's Legal Director or the Chair of the Costs Appeals Committee considers that the matter should proceed for certification to the Costs Appeals Committee then the matter will be listed for consideration by that Committee.
6. Applications for certification of Points of Principle of General Importance are, unless permission to attend is granted by the Chair of the Costs Appeals Committee, considered by that Committee on a documents only basis.
7. On considering an application for certification, the Costs Appeals Committee will either:
 - (a) decide whether to certify the Point of Principle of General Importance sought and / or, where appropriate, amend any of the Assessments of the Assessor to give effect to this determination, or refer the matter back to the Assessor for them 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.
8. You, the Director and, where appropriate, the Assessor will be notified of the decision of the LSC's Legal Director or the Costs Appeals Committee.

6.11 On what basis will assessments and appeals be carried out?

1. Any assessment made by the ~~Regional~~ Director and any decisions made on appeal by the ~~Costs Committee~~ Assessor or Costs Appeal Committee will take place on the basis of determining the reasonableness of the work done in accordance with the requirements of the Contract and Guidance. Allowance will only be made for work claimed that is supported by appropriate evidence on the file, in the form of timed and dated attendance notes, and where appropriate by relevant documentation, such as copies of documentation drafted or considered.
2. 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 this Specification).

6.12 What if counsel's fees are reduced on assessment?

1. Where the ~~Regional~~ Director reduces any claim for counsel's fees on assessment, then you must notify counsel within 7 days of receiving the assessment. Counsel will have the same rights of appeal to the ~~Cost Committee~~ Assessor and Costs Appeals Committee as you do.

General Civil Contract (Solicitors) Specification

Paras. 6.5 and 7.2 (prior authority to instruct Queen's Counsel)

General Civil Contract (NfP) Specification

Paras. 9.5 and 15.2 (prior authority to instruct Queen's Counsel)

Add a new sub paragraph 3 to Paragraph 6.5 (9.5 NfP) and sub paragraph 6 to Paragraph 7.2 (15.2 NfP) as set out below:

For the avoidance of doubt, prior authority to instruct a Queen's Counsel (see regulation 59 of the Civil Legal Aid (General) Regulations 1989) is required only where Queen's Counsel will act as such, and not where Queen's Counsel choose to act and be paid only at junior counsel rates.