

**AMENDMENTS TO GENERAL CRIMINAL CONTRACT
AND GUIDANCE MANUALS**

For consultation and proposed implementation in October 2006

This consultation ends on **26 June 2006** and all responses should be sent to:

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Note:

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The following pages contain a narrative explaining the proposed changes. The corresponding **Appendices** contain the proposed amendments.

Notes:

The Commission will be making changes to a number of CDS forms in order that equal opportunities data can be collected for clients benefiting from CDS funding. It is intended that data on ethnicity, gender and disability will be collected. It is not necessary for changes to be made to the General Criminal Contract to implement this change but there will be consultation with The Law Society and other representative bodies on amendments to forms and guidance for service providers. It is anticipated that these changes will come into effect from October 2006.

There is one further set of amendments proposed for implementation in October 2006, to revise our arrangements for costs committees. This proposal is the subject of a separate consultation and the details are available on our website now.

NARRATIVE

A CDS Act Changes

The Criminal Defence Service Act 2006 was passed earlier this year. By amendments to the Access to Justice Act 1999, it empowered the Lord Chancellor to make regulations introducing two major changes relating to criminal Representation Orders: the transfer of the power to grant such orders from the courts to the Commission; and the reintroduction of means testing.

The regulations to introduce both changes to the magistrates' courts only are planned for implementation on 2 October 2006. Neither change requires an amendment to the General Criminal Contract ('the Contract') in itself, and both will take effect whether any amendments are made or not. The Commission's proposals are intended to achieve the following objectives:

- to introduce an Early Cover scheme to complement the system of means tested representation;
- to reform the process of granting and paying for legal services in 'prescribed proceedings' (such as those relating to Anti-social Behaviour Orders); and
- to ensure that the wording of the Contract reflects the reality of the new system.

A1 Early Cover

Background

The government and the Commission have made clear during the development of the means testing policy their commitment to ensuring the provision of effective legal advice at the earliest possible stage of criminal proceedings. Advice at the first hearing from a defendant's own solicitor can be a crucial factor in determining whether that hearing is effective, by ensuring that the correct advice is given on plea and mode of trial and that the defendant is properly represented.

The current provisions in the Contract ensure that urgent work performed for a defendant who is later granted Representation can be claimed under that Order, and that some work (capped at the equivalent of one hour's preparation) can be claimed where an application for Representation is refused. The court duty solicitor is also available for eligible defendants who have not secured the services of a solicitor in time for the first hearing.

The Commission considers that these provisions will adequately provide for the majority of defendants. However, it is keen to ensure that, where uncertainty exists at the time of the first hearing because the defendant has not yet received a decision in respect of an application for a Representation Order, he or she should nevertheless be able to secure the services of his or her own solicitor. In practical terms, this means there should be some guarantee for the solicitor that the services provided will be adequately remunerated.

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Controls

It is not the Commission's intention that these services should be provided to defendants who do not qualify for Representation on the interests of justice test (the existing Pre-order Cover scheme already provides for them if appropriate conditions apply). Nor does it intend to provide for services that do not progress the case, or for representation that amounts to no more than an unjustified request to adjourn.

The Commission is concerned to ensure that applications for Representation are made properly and promptly, so that decisions on means and merits can be made before the first hearing wherever possible. Finally, it is concerned that the payment regime should be simple to understand and administer, and should not encourage excessive or unnecessary work.

Proposal

The Commission's proposal is therefore to pay a flat fee of £75.00 to solicitors who represent a defendant at their first hearing where:

- A properly completed application for Representation has, with the help of the solicitor, been submitted and received by the representation authority, within two working days of the client being charged;
- No decision on that application has been made before 9 am on the day of the first hearing;
- The first hearing advances the case and any adjournment is justified;
- The eventual decision is that the case passes the merits test but the defendant does not pass the means test.

The purpose of the deadline is to ensure that decisions are made on representation before the first hearing. Whilst there is a commitment to process applications within two working days, there will be cases (for instance where the defendant is kept in police custody) where the first hearing takes place before there has been an opportunity to submit the application so that it is received within the target deadline. In these cases, the draft amendment sets out the circumstances in which the solicitor may still qualify for an Early Cover Fee.

A consequential change is proposed to the Pre-Order Cover provision, to ensure that it continues to fulfil its purpose to provide cover for those who fail the interests of justice test (provided conditions apply), but does not also apply to those who fail the means test only.

The following chart shows the overall provision for work done before an order is granted:

Decisions by Representation Authority:	Interests of Justice test passed	Interests of Justice test not passed
Financially Eligible	Claim under Representation Order as Pre-Order Work	Pre-Order Cover (where conditions met)
Not Financially Eligible	Early Cover	Pre-Order Cover (where conditions met)

A2 Prescribed Proceedings: Changes to Contract and Guidance

The definition of criminal proceedings in section 12 of the Access to Justice Act 1999 includes (in paragraph 12 (2) (g)) any proceedings prescribed as such by the Lord Chancellor. This allows him to provide that some proceedings, which are classed as 'civil' for most purposes, can be classed as 'criminal' for legal aid purposes, allowing qualifying individuals who are the subject of such proceedings to instruct Criminal Defence Service suppliers to represent them.

The Criminal Defence Service (General) (No 2) Regulations 2001, as amended, lists the various proceedings in the magistrates' and Crown Courts that have been prescribed in this way. Among them are proceedings relating to anti-social behaviour orders, closure orders, football banning orders, various types of parenting order, and orders under the Sexual Offences Act 2003. They also include proceedings in which an individual faces a risk of imprisonment for failing to pay a sum due or obey a court order in civil proceedings.

The 1999 Act provides that it is the Commission rather than the courts that has power to grant Representation in these cases. However, for administrative convenience, the Commission has allowed suppliers to act instead under the Advocacy Assistance scheme, which allows solicitors themselves to grant applications under devolved powers (up to a costs limit of £1,500). The scheme is remunerated by non standard fees and is non means tested.

The Commission considers that with the transfer of the power to grant Representation in the magistrates' courts, the distinction between 'mainstream' and 'prescribed' criminal proceedings for legal aid purposes should fall away. Furthermore, it would be anomalous to allow a non means tested scheme to continue for such cases while all other criminal proceedings were means tested.

The Commission therefore proposes to withdraw the Advocacy Assistance scheme for such proceedings in the magistrates' courts, on the basis that they will now be dealt with by way of Representation Orders. A proposed amendment to the remuneration provisions in the Contract would allow such cases to be remunerated under the usual standard fee scheme that applies to other criminal cases.

A3 Consequential and drafting changes

A number of references in the Contract should be changed to reflect the new system.

B Other Changes to the General Criminal Contract and Guidance

B1 Change of Solicitor

This proposal clarifies the remuneration arrangements that apply when a representation order is transferred from one firm to another. Confirming current practice, it specifies that mergers and restructuring etc do not amount to a change of solicitor justifying two standard fees. A similar, but broader, amendment was proposed in a consultation paper last year. Respondents to that consultation endorsed the clarification on mergers and restructuring etc. However, they felt that the other amendments proposed were too wide in scope. They also objected to the proposal that the LSC should determine the division of payments between firms. In response to these concerns, we have reduced the scope of the other proposed amendments and have removed the provision for the LSC to determine the division of payments.

C Changes to the Guidance Manuals

C1 Rationalisation of the Guidance Manuals

The General Criminal Contract is supplemented with three guidance manuals, which are intended to assist both suppliers and the Commission's own staff in interpreting how the Contract works. They are the Criminal Bills Assessment Manual, the Duty Solicitor Manual, and the Police Station and Court Duty Solicitor Costs Assessment Manual.

The manuals are available online. They supplement guidance in the Contract itself, and complement Volume 4 of the LSC Manual.

The Commission recognises that this combination of documents is confusing, and is committed to an ongoing process of simplifying them. As a first step, it proposes removing some parts of the two smaller manuals that simply duplicate parts of the contract, and merging together the two manuals that deal with costs assessment issues.

D Change to the Police Station Register Arrangements 2001 (as amended)

D1 Former solicitors holding PSQ to be treated as accredited

These Arrangements govern the circumstances in which the Commission allows an individual to register as a police station representative (enabling his or her advice at police stations to be remunerated under the Contract). An issue has emerged for individuals who obtain the Police Station Qualification (PSQ) while working as a solicitor, but then cease to be a solicitor. Under the current Arrangements they would be required to start re-training as a probationary representative. The Commission proposes that provided they hold the PSQ, they should be treated instead as if they were accredited representatives.

A CDS Act Changes

A1 Early Cover: Contract Changes

General Criminal Contract Specification

Part A Scope and Structure of Contract Work

Amend Part A, Rule 3.2.1 (c) as follows:

(c) **Representation in a magistrates' court which is either covered by** ~~pursuant to a Representation Order~~ or by subsection (iii) below including:

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

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

Insert new Part A, Rules 3.3.7 and 8 as follows:

Qualifying Criteria

Other

- 7. In order to receive Pre-Order Cover the appropriate requirements set out in Part B, Rule 5.13.1 must be met.
- 8. In order to receive Early Cover the appropriate requirements set out in Part B, Rule 5.13.2 must be met.

Amend Part A, Rule 3.6.3 as follows:

- 3. The maximum fee payable for Claims for Pre-Order Cover under paragraph 3.2.1(c)(iii) is £49.70 (national) £52.55 (London) inclusive of travel, waiting and disbursements but exclusive of VAT. Claims should be made at the hourly rates set out in Part E, Section 3.5.

Part B Rules and Guidance on Performing Contract Work

Amend Part B, Rule 2.14.3 as follows:

3. Once a Representation Order has been granted, any Early Cover or pre-Order cover (Part B, Rule 5.13) given to the Client on issues which form part of the Case covered by the Representation Order must be claimed under the Order in accordance with the Rules set out in Part A, Section 3 of this Specification and Part B, Rule 5.13.

Amend Part B, Rule 5.13 as follows:

5.13 Pre-Order Cover and Early Cover

Pre-Order Cover

1. Where an application for a Representation Order is made and refused on the interests of justice test (irrespective of whether the Client passes or fails the means test), you may claim a limited amount of work carried out on that Matter or Case as Pre-Order Cover at the rates applicable to magistrates' court Representation (see Part E Section 3.5) provided that all of the following conditions are met:
 - (a) a qualified Solicitor who is a designated fee-earner (see Part D, Rule 3.2) or a Quality Mark Supervisor in the crime category has determined that the case meets the interests of justice criteria set out in Schedule 3 of the Access to Justice Act 1999, and has documented on file the reasons why (either by retaining a copy of the application for Representation or by some other means);
 - (b) the effective date of refusal is the date on which you are first notified of refusal by the court in writing or by other means. If you appeal against the court's decision to refuse, then any work reasonably undertaken in relation to lodging the appeal may be claimed as pre-Order Cover provided that it does not exceed the maximum fee set out in (c) below. Further work undertaken on the case itself once an appeal has been lodged may not be claimed if the appeal is unsuccessful. If a Representation Order is granted on appeal then all the work undertaken since the date on which the original properly completed application was received by the court, including any pre-Order work, shall be claimed under the Order as part of the standard fee Claim. A copy of the court's written notification of refusal of the Representation Order must be available on file;
 - (c) the work done may include any combination of preparation, advocacy, routine letters and telephone calls, travel and waiting claimed at the applicable rates in Part E Section 3.5, but the maximum fee claimed and payable shall not exceed a total of £49.70 (national) or £52.55 (London). This figure includes any travel, waiting and disbursements but is exclusive of VAT.;
 - ~~(d) any pre-Order work undertaken for a Client who is granted a Representation Order shall be included as part of the standard or non-standard fee Claim under that Order and may not be claimed separately. If you act for more than one Client in the same Case and if one or more of those Clients is not~~

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~~granted a Representation Order a separate claim for pre-Order cover may be made for each Client and the maximum fee above will apply to each separate Claim. You must assign a separate UFN to each Claim;~~

~~(e) pre-Order cover may not be claimed by a court Duty Solicitor for work undertaken during the court Duty Period. Any work undertaken that falls within scope of the court duty solicitor scheme shall be included in a single Claim for the Duty Period at the applicable court Duty Solicitor rates set out in Part E Section 3.4 of this Specification.—~~

(d) you do not make any claim for an Early Cover fee in respect of this work.

Early Cover

2. Where an application for a Representation Order is made and refused on means you may claim as one Early Cover fee (see Part E Section 3.1) in respect of work carried out on that Matter or Case provided that all of the following conditions are also met:

- (a) a properly completed application for Representation has been received by the Representation Authority by 9am on the third working day following the date of charge;
- (b) you have taken all reasonable steps to assist the Client to complete and submit the application with the appropriate supporting evidence;
- (c) the application has not been granted or refused by 9 am on the date of the first hearing;
- (d) you represent the Client at the first hearing;
- (e) the first hearing moves the case forward and any adjournment is justified;
- (f) the final decision is that the case passes the interests of justice test but not the means test.

3. In cases where the first hearing takes place before the Client has been able to submit an application within the timescale set out at 2(a) you may still claim an Early Cover fee provided that:

- (a) conditions 2(d) & (e) have been met; and
- (b) the Client proceeds to submit an application in accordance with conditions 2(a) & (b); and
- (c) the subsequent determination of that application satisfies 2(f).

4. No disbursements may be claimed under Early Cover.

General provisions on Pre-Order Cover and Early Cover

5. Any work undertaken in the Criminal Proceedings Class relating to an application for a Representation Order for a Client who is subsequently granted one shall be included as part of the standard or non-standard fee Claim under that Order and may not be claimed separately. If you act for more than one Client in the same Case and if one or more of those Clients is not granted a Representation Order a separate claim for Pre-Order Cover or Early Cover as appropriate may be made for each Client. You must assign a separate UFN to each Claim.

6. Neither payment for Pre-Order Cover nor Early Cover fees may be claimed by a court Duty Solicitor for work undertaken during the court Duty Period. Any work undertaken that falls within scope of the court duty solicitor scheme shall be

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included in a single Claim for the Duty Period at the applicable court Duty Solicitor rates set out in Part E Section 3.4 of this Specification.

Part E Remuneration under the General Criminal Contract

Insert new Part E, Rule 3.7 as follows:

3.7 Early Cover

Early Cover Fee: £75.00

Note:

No disbursements, travel or waiting may be claimed under Early Cover. The fee may only be claimed if the conditions described in Part B 5.13.2 are met.

A2 Prescribed Proceedings: Changes to Contract and Guidance

General Criminal Contract Specification

Part A Scope and Structure of Contract Work

Amend Part A, Rule 3.2.1 as follows:

1. This Class includes all work undertaken for a Client during Criminal Proceedings in a Matter or Case from the date of charge or summons. The following Units of Work fall within this Class:
 - (a) **Advice and Assistance** to a Client who is eligible for help from the court Duty Solicitor acting as such under Part B, Section 8.3;
 - (b) **Advocacy Assistance in the magistrates' court** by a Court Duty Solicitor acting as such:
 - (i) subject to Part B, paragraph 8.3.1(b) at any bail application where the defendant is held in custody;
 - (ii) to a defendant not in custody provided it is in connection with an imprisonable offence;
 - (iii) to an individual involved in proceedings prescribed under Regulation 3 (2) of the Criminal Defence Service (General) (No 2) Regulations 2001 (as amended).
 - (c) ~~in the following circumstances:~~
~~**By any solicitor (including a court Duty Solicitor acting as such)**~~
 - ~~(i) to an individual at risk of imprisonment in civil proceedings for failure to pay a fine or other sum ordered or to obey an order of a magistrates' court;~~
 - ~~(ii) to a respondent in proceedings under sections 1 or 1D of the Crime and Disorder Act 1998 relating to an anti-social behaviour order (including an application to vary or discharge such an order);~~
 - ~~(iii) to a respondent in proceedings under sections 2 and 5 of the Anti-social Behaviour Act 2003 relating to a closure order;~~
 - ~~(iv) to a respondent in proceedings under section 8(1)(b) of the Crime and Disorder Act 1998 relating to a parenting order made where an anti-social behaviour order or a sex offender order is made in respect of a child or young person (including an application to vary or discharge such an order);~~
 - ~~(v) to a respondent in proceedings under section 8(1)(c) of the Crime and Disorder Act 1998 relating to a parenting order made on the conviction of a child or young person (including an application to vary or discharge such an order);~~
 - ~~(vi) to a respondent in proceedings under section 14B (banning orders made on complaint), an applicant in proceedings under section 14G (variation of a banning order) or section 14H (termination of a banning order) of the Football Spectators Act 1989;~~
 - ~~(vii) to a respondent in proceedings under sections 20 and 26 of the Anti-Social Behaviour Act 2003 relating to parenting orders in cases of exclusion from school and parenting orders in respect of criminal conduct and anti-social behaviour;~~
 - ~~(viii) to a respondent in proceedings under sections 97 and 100 of the Sexual Offences Act 2003 relating to notification orders and interim notification orders;~~

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

By a court Duty Solicitor acting as such

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

Subparagraphs (c), (d) and (e) are not shown, but remain unchanged.

Insert new Part A, Rule 3.2.2 as follows:

2. For the avoidance of doubt, proceedings that are prescribed under Regulation 3 (2) of the Criminal Defence Service (General) (No 2) Regulations 2001 (as amended) may be covered by a Representation Order granted by the Representation Authority. Applications for such Orders should be made in the normal way.

Amend Part A, Rule 3.6 as follows:

3.6 Work Limitations

1. There are no Work Limitations in the Proceedings Class of Work. Subject to any authority to extend the limit granted in accordance with Part B, Rule 2.9 of this Specification, the following work limitations apply (other than to work undertaken by a court Duty Solicitor acting as such):

	Breach of an order, Crime and Disorder, Football Disorder Advocacy Assistance under paragraphs 3.2.1(b)(i) to (v) and (d), including any Advice and Assistance under paragraph 3.2.1(a) required to be included in the same Claim
Upper Limit	£1500

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1. ~~These work limitations apply in addition to any limitations appearing on the Representation Order.~~
2. This subparagraph has been intentionally omitted.

Part A, Rule 3.6.3 is not shown, but remains unchanged.

Part E Remuneration under the General Criminal Contract

Amend heading of Part E, Rule 3.3 as follows (and amend Table of Contents accordingly):

- 3.3 Advocacy Assistance in a ~~magistrates' court (other than by a court Duty Solicitor acting as such) or~~ Crown Court (and Crown Court Representation where an Order is granted by the Commission)

Add the following sections to the table under Part E, Rule 3.5.3:

Category 1

- 1.6 proceedings prescribed under Regulation 3 (2) of the Criminal Defence Service (General) (No 2) Regulations 2001 (as amended), except where the case was listed and fully prepared for a contested hearing to decide whether an order should be made

Category 2

- 2.6 proceedings prescribed under Regulation 3 (2) of the Criminal Defence Service (General) (No 2) Regulations 2001 (as amended), where the case was listed and fully prepared for a contested hearing to decide whether an order should be made

Criminal Bills Assessment Manual

Amend Paragraph 1.3.3 as follows:

3. Note that although a representation order may be granted by the Commission in any of the proceedings specified in Regulation 3(2), in practice it will be rare for such an order to be granted for Crown Court proceedings. This is because the General Criminal Contract allows practitioners to self grant Advocacy Assistance in the ~~magistrates' court or~~ Crown Court for all such proceedings: see Part A, paragraphs 3.2.1(b) and (d) GCC. Advocacy Assistance is a form of Advice and Assistance and is granted under Section 13 of the Act. Given the availability of Advocacy Assistance it will generally not be in the interests of justice for a representation order to be granted in such cases. If an order is granted by the Commission the work should be claimed as a non-standard fee.

Amend Paragraph 3.8.5 as follows:

This section does not apply to breach of a civil order made by the magistrates' court e.g. failure to pay community charge. Representation may ~~not~~ be granted by the ~~representation authority~~ ~~magistrates' court~~ as such proceedings ~~fall outside the definition in Section 12(2) of the Access to Justice Act 1999. They are prescribed under Section 12(2)(g) of the Access to Justice Act 1999 and funding is available through the supplier self granting Advocacy Assistance (or~~

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~~by an application to the Commission for representation in exceptional circumstances).~~

Amend Paragraph 3.12.8 onwards as follows:

8. Work carried out for qualifying clients in respect of proceedings to apply for an ASBO ~~(except in the county court, and where an ASBO is made as part of the sentence at the conclusion of criminal proceedings) may be done under self-granted Advocacy Assistance and claimed in accordance with the rules in Part B, section 4 GCC. This work is subject to an extendable upper financial limit of £1,500.~~ in the magistrates' court may be the subject of a Representation Order. The application is made in the same way as for mainstream criminal proceedings, and the same means and merits (interests of justice) tests apply.
9. An applicant or respondent may apply under Section 1(8) of the C&DA to the court that made the ASBO for it to be varied or discharged. In the magistrates' court, any Representation Order for the original proceedings will cover proceedings to vary or discharge the order, and A solicitor may self grant Advocacy Assistance for the purposes of proceedings to vary or discharge an ASBO. The application is treated as part of the same case as the original proceedings, although the additional work may be claimed by way of a supplemental claim using the same UFN as the main proceedings. Applications to vary or discharge an ASBO made in the county court under Section 1B(5) of C&DA are not within the scope of the General Criminal Contract.
10. Applications to vary or discharge an ASBO made in the magistrates' (criminal) court under Section 1C(6) of the C&DA are treated as part of the original criminal proceedings and funded under the original representation order. As above, additional work may be claimed by way of a supplemental claim using the same UFN as the original proceedings.
11. An appeal against the making of an ASBO lies to the Crown Court under section 4 of the C&DA. A solicitor may self-grant Advocacy Assistance for an appeal against an ASBO to the Crown Court. The Advocacy Assistance merits test must be applied, and for proceedings in the Crown Court, this is based only on the general reasonableness test (Part B, Rule 4.3 and paragraph 6.3.20 GCC).
12. Solicitors may instruct counsel and the magistrates' court hourly rates specified in Part E, section 3.3 of the Contract apply. The solicitor may not claim time spent accompanying counsel (GCC Part B, Rule 4.8). Although the Commission is empowered to grant representation orders, it is unlikely that it would, given that self-granted Advocacy Assistance is available. However, in certain circumstances, for example, where equality of arms is in issue, the Commission may consider granting a representation order. Applications for representation orders in these circumstances should be made to the appropriate Processing Centre on Form CDS3 and the work claimed as a non-standard fee. The Crown Court is not empowered to grant representation orders in relation to appeals against ASBOs. Where the Crown Court has granted a representation order in these circumstances, both the supplier and the court should be informed that the order is *ultra vires*, and the supplier should be advised to seek an *ex gratia* payment from the Court Service.
13. If without reasonable excuse the defendant breaches the terms of an ASBO he or she shall be liable on summary conviction to imprisonment for a term not exceeding 6 months or to a fine or to both, or on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine or to both. A breach of an ASBO is a recordable and arrestable criminal offence that will be tried summarily in the magistrates' court or on indictment in the Crown Court. Cases against children will be heard in the youth courts. As breach of an ASBO is a criminal offence, the proceedings fall within the definition of 'criminal proceedings' in Section 12(2) of the

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Access to Justice Act 1999, and a representation order should be sought from the relevant court, which may be either the magistrates' court or the Crown Court, to cover the breach proceedings. The work undertaken in either the magistrates' court or the Crown Court should be claimed from the Commission as breach proceedings under the standard fee scheme in the usual way (see section 3.8).

14. When considering whether such proceedings are within scope of Advocacy Assistance suppliers must first consider whether one of the relevant merits tests is met. Suppliers are referred to General Criminal Contract, Specification Part B Rule 4.3.

Table of Funding Arrangements for Anti-Social Behaviour Orders

Legislation	Section	Court and nature of Order sought	Funding available
Crime and Disorder Act 1998	1 & 1 d	Magistrates Court. Anti-social Behaviour Order, sought by relevant authority to protect public from anti-social behaviour.	<u>Representation Order.</u>
Crime and Disorder Act 1998	1 b (5)	County Court. Anti-social Behaviour Order, sought by relevant authority to protect public from anti-social behaviour	Funded by Community Legal Services, i.e Legal Help or a Civil Certificate. Out of scope for funding under the General Criminal Contract.
Crime and Disorder Act 1998	1 (c)	Magistrates Court or Crown Court. Following conviction of an offence where the Court considers that the defendant acted in an anti-social manner and an order is necessary to protect the public from further anti-social acts.	Representation Order. Such proceedings are treated as incidental to the main proceedings, therefore funded under the Representation Order granted in respect of the substantive criminal charges.
Crime and Disorder Act 1998	2 & 2A	Magistrates Court. Sex Offender Order, sought by relevant authority where person has acted in such a way as to give cause to believe that an order is necessary to protect the public from serious harm.	Advocacy Assistance, as above. Courts have no jurisdiction to Grant Representation Orders in such cases.

A3 Consequential and Drafting Changes

General Criminal Contract Standard Terms

Insert in Part A1, Definitions:

“Early Cover” has the meaning described in Part B 5.13 of the Specification

“Pre-Order Cover” has the meaning described in Part B 5.13 of the Specification

“Representation Authority” means the organisation currently responsible for issuing Representation Orders

General Criminal Contract Specification

Part A: Scope and Structure of Contract Work

Amend Part A, Rule 3.3 as follows:

3.3 Qualifying Criteria

Merits

1. The Sufficient Benefit Test set out in Part B, Rule 2.5 of this Specification must be met in order to receive Advice and Assistance under paragraph 3.2.1(a) above.
- ~~2. The appropriate Advocacy Assistance merits test set out in Part B, Rule 4.3 must be met in order to receive Advocacy Assistance under paragraphs 3.2.1(b)(i) to (v) (other than where this is provided by the court Duty Solicitor acting as such).~~
3. The appropriate Advocacy Assistance merits test set out in Part B, Rule 4.3 must be met in order to receive Advocacy Assistance under paragraph 3.2.1(d) above.
4. A Client must have been granted a Representation Order by a Representation Authority or court (or by the Commission in proceedings prescribed under section 12(2)(g) of the Act) in order to receive Representation under paragraphs 3.2.1(c), (d) or (e) above, except in the case of 3.2.1(c)(iii) where the requirements in Part B, Rule 5.13 must have been met.
5. A Client must have had an application approved by the Contractor under Devolved Powers in accordance with Part B, Rule 4.5 of this Specification in order to receive Advocacy Assistance ~~in the magistrates’ court under paragraph 3.2.1(b) above (except where it is being provided by a court Duty Solicitor acting as such) or~~ in the Crown Court under 3.2.1(d) above.

Financial

6. In order to receive Advice and Assistance under paragraph 3.2.1(a) above from the court Duty Solicitor acting as such the Client is not required to satisfy any financial criteria.
7. In order to receive Representation in magistrates’ court proceedings the Client is required to satisfy financial criteria. The Client’s eligibility will be assessed by the Representation Authority.

B Other Changes to the Contract (and Related Guidance)

B1 Change of Solicitor

General Criminal Contract Specification

Part E: Remuneration under the General Criminal Contract

Amend Part E, Rule 3.5.6 and insert new Rule 3.5.6A as follows:

6 Subject to paragraphs 3.5.5 and 3.5.6A, where there is a change of firm assigned under a Representation Order in proceedings to which the standard fee table applies the proceedings shall be treated as category 1 proceedings for the purposes of a Claim for costs in respect of work done under the Representation Order by the firm formerly assigned.

6A. Where there is a change of firm assigned under a Representation Order issued on or after 2 October 2006 in proceedings to which the standard fee table applies, the provisions for payment to the firm originally assigned (“the old firm”) and the newly assigned firm (“the new firm”) shall be as follows:

(a) Except in the circumstances described in sub-paragraph (b) (below), the old firm and the new firm may each submit Claims for costs. However, subject to paragraph 3.5.5 (above) for the purposes of the old firm’s Claim for costs under the Representation Order, the proceedings shall be treated as category 1 proceedings;

(b) Where

(i) the conducting solicitor moves from the old firm to the new firm (e.g. becomes a partner in, or employee of, the new firm); or

(ii) the old firm and the new firm are, or will shortly be, closely related (e.g. the old firm has restructured to facilitate the creation of the new firm or there has been, or will shortly be, a merger of the old firm and the new firm or an acquisition of the old firm by the new firm); or

(iii) the old firm is unable to continue representing the client following the termination of all, or part, of its contract (or, in anticipation of this, ceases to represent the client);

payment shall be as if one firm had been assigned throughout and only the new firm may submit a Claim for costs;

(c) Where the new firm submits a Claim under sub-paragraph (b) above, it shall do so taking account of both its costs and the costs of the old firm, but payment shall be made only to the new firm. It shall be for the old firm and the new firm to agree between themselves any division of monies.

C Changes to the Guidance Manuals

C1 Rationalisation of the Guidance Manuals

Duty Solicitor Manual

Remove Chapter 9 (Own Client/Duty Solicitor Cases). (This merely duplicates provisions in the Contract and the Police Station and Court Duty Solicitor Costs Assessment Manual, and is the only part of this Manual that does not relate directly to the operation of the Duty Solicitor Arrangements.)

Re-number Chapter 10 and Appendices 10A to C, and amend any references in this and other documents accordingly.

Police Station and Court Duty Solicitor Costs Assessment Manual

Remove Chapter 10 (Court Duty Solicitor). (This merely duplicates provisions in the Contract.)

Remove all Appendices (1, 3 to 7, 10 and 12) that duplicate parts of the Contract. Replace all references to Appendices in the Manual with references to the relevant parts of the Contract.

Move Chapter 1.2 to end of Chapter 2 and remove remainder of Chapter 1 (which merely duplicates guidance provided elsewhere).

Re-number remaining Chapters (2 to 9) as Chapters 12 to 19 and insert at end of Criminal Bills Assessment Manual.

Re-number remaining Appendices (2, 8, 9 and 11) as 13 to 16 of the Criminal Bills Assessment Manual.

Amend contents list of that manual accordingly and insert headings Part 1: Representation and Part 2: Police Station before Chapters 1 and 12 respectively.

Amend all references accordingly in this and other contract documents.

D Change to the Police Station Register Arrangements

D1 Former solicitors holding PSQ to be treated as accredited

Add a new Paragraph 2.9 as follows:

- 2.9 The Commission shall, unless a senior member of staff in the Head Office CDS Policy Team decides there is good reason to refuse, register a representative on the police station register as accredited without having to complete any of the relevant tests if the applicant has previously been a Duty Solicitor and currently holds the Police Station Qualification (by passporting or otherwise), provided he or she produces proof of CLAS membership together with a signed certificate of fitness from a supervising solicitor.