

# Duty Solicitor Call Centre and CDS Direct Expansion



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## **Introduction & Background**

1. This consultation paper outlines the Commission's proposal to expand the role of the Duty Solicitor Call Centre and of the CDS Direct pilot to cover own client work. They will change the way in which clients access publicly funded advice on criminal issues whilst in the police station.
2. These changes are part of the criminal reform programme which was established following Lord Carter's final report, 'Legal Aid: A market-based approach to reform', published in July 2006, which DCA and LSC accepted in 'Legal Aid Reform: the Way Ahead', published in November 2006.

### **The Duty Solicitor Call Centre**

3. At present all Duty Solicitor cases in the police station are referred by custody staff to the Duty Solicitor Call Centre, which records basic details of the alleged offence before passing the case on to a Duty Solicitor.
4. First Assist Ltd presently runs the Duty Solicitor Call Centre contract for the Commission having been successful at the last EU tender. The centre is open 24 hours a day, 365 days a year and at present receives over 460,000 calls from police stations each year and makes 840,000 outgoing calls to solicitors.
5. At present, in cases where a client has requested advice from a particular firm (their own solicitor), these cases are not referred to the Duty Solicitor Call Centre because the chosen firm is contacted directly by the custody sergeant.

### **CDS Direct**

6. Since October 2005 the Commission has piloted a scheme called CDS Direct, which provides telephone advice, available 24 hours a day, to clients detained in the Police Station. Currently CDS Direct only covers duty solicitor cases, not own client cases. It is restricted to those cases that are considered suitable for telephone only advice.
7. The CDS Direct Pilot was evaluated in May 2006 and again in late 2006. The pilot's successes included:
  - Annual savings generated by the pilot to the legal aid fund estimated at £3.9 million
  - 95% of calls attempted within 15 minutes (target 70%)
  - 99% of calls attempted within 30 minutes (target 95%)

8. The table below demonstrates the volumes and outcomes of cases dealt with by CDS Direct during the pilot.

	<b>Volume</b>	<b>%</b>
Total cases handled in pilot	36211 (Circa 200 per day)	N/A
Calls closed by telephone advice	25,441	70%
Referred back to Duty Solicitor Call Centre without CDS Direct providing advice e.g. client explains that his case is not simply a drink driving matter, but also involves TWOC.	7790	22%
Deployed to private practice	2,980	8%

(Figures taken from the CDS Direct Pilot Evaluation, August 2006)

9. Examples of the offences that are handled by CDS Direct are non-imprisonable offences, driving with excess alcohol, failure to provide a specimen and breach of bail conditions. We do not currently retain data on how many own client matters are of this type. Full details of the CDS Direct scope can be found in **Appendix 1**.
10. Lord Carter's Review of Legal Aid Procurement 'Legal Aid: A market-based approach to reform' recommended the expansion of CDS Direct and the Duty Solicitor Call Centre to incorporate own solicitor work in order to safeguard the saving that the Commission expects to make as a result of the introduction of fixed fees. Alongside publication of Lord Carter's report, the DCA and the LSC jointly issued the consultation paper 'Legal Aid: a sustainable future', which consulted on reforms recommended by Lord Carter.
11. We originally consulted on the CDS Direct pilot in May 2004, with a further consultation paper published in October 2004, the outcome of which can be found at:  
  
[http://www.legalservices.gov.uk/docs/criminal\\_consultations/CDS\\_Direct-Response\\_to\\_Second\\_Consultation\\_1.pdf](http://www.legalservices.gov.uk/docs/criminal_consultations/CDS_Direct-Response_to_Second_Consultation_1.pdf)
12. This paper offers further consultation on the principle of an expanded service provided by both Duty Solicitor Call Centre and CDS Direct and the intended process for the altered system. In light of the consultation that has already taken place on this policy this consultation period is limited to six weeks commencing on 20 March 2007 and closing on 1 May 2007.

## Section 1 – The Carter Review

13. In Chapter 3, paragraph 48 of ‘Legal Aid: A market-based approach to reform’, Lord Carter stated:

*“48 All requests for advice at the police station should go through the duty solicitor call centre. CDS Direct will also be rolled out subject to a review of the evaluation evidence.”*

In Chapter 4, paragraphs 25 to 27 he stated:

*“25 All requests for advice – both duty and now own solicitor should be routed through the duty solicitor call centre. This is particularly important during 2007-08 to protect against the potential of a small number of suppliers seeking to drive their volume of cases up in inappropriate matters prior to the boundary arrangements.”*

*“26 As previously mentioned in Chapter 3, CDS Direct could be continued in pilot areas and extended to own client work. However the extensions of the pilot in Liverpool and Boston (Lincolnshire) should be discontinued.”*

These extensions have been discontinued as recommended.

*“27 If the duty solicitor call centre and CDS Direct are expanded in the way suggested this could provide a filter whereby the risk of some firms taking up cases to maximise fee take would be reduced. The new system will also provide management information, which could be used to identify inefficiencies within the wider criminal justice system.”*

14. In Recommendation 4.5, Lord Carter stated:

**“Recommendation 4.5:** *The duty solicitor call centre and CDS Direct should be monitored closely by the Legal Services Commission. The monitoring should be on a monthly basis and at a local scheme level, and should look at the volume of cases, and review their effectiveness and quality of service. If this fails to control any increase in volume of work being undertaken in the police station then DCA and the Commission should consider options for restricting defendant eligibility. This should happen alongside the introduction of police station fees in October 2007.”*

15. Although we consulted on the prospect of CDS Direct covering own client work prior to the launch of the pilot, these recommendations were not directly raised in either the consultation paper ‘Legal Aid: a sustainable future’ or the Government’s response: ‘Legal Aid Reform: the Way Ahead’. In the circumstances, we thought it right to provide a further opportunity for feedback on these proposals, especially as they are intended to support the overall structure for police station advice, following the implementation of fixed fees and the move to best value tendering.

## Section 2 – The Current System

16. At present when an individual is detained on suspicion of an offence, he or she is informed of the right to free, independent legal advice. If they choose to take advantage of this right, they are asked if they would like to nominate their own solicitor or make use of the Duty Solicitor scheme. The current system is outlined below and a flowchart showing how it operates can be found in **Appendix 2**.
17. Approximately 40% of detainees who take advantage of the right to free and independent legal advice opt to see the Duty Solicitor. In these cases, custody staff contact the Duty Solicitor Call Centre which either transfers the call to CDS Direct or deploys a Duty Solicitor, depending on the nature of the case.
18. If CDS Direct is deployed and it becomes apparent during the call that an attendance will be required, CDS Direct transfer the call back to the Duty Solicitor Call Centre, which then deploys a Duty Solicitor.
19. The remaining 60% of individuals who ask for legal advice at the police station request the services of their own solicitor. For these detainees, custody staff contact that solicitor directly and the solicitor, if available, provides telephone advice and may attend if appropriate.
20. If that solicitor is unable to attend the police will then ask the individual whether he or she would like to nominate another solicitor or use the Duty Solicitor.
21. Where friends or family members of detained individuals contact own solicitors directly, they can provide telephone advice and if necessary, attend the police station to see the detainee and may claim for this work using own client rates as set out in the General Criminal Contract.

### **Section 3 – The Need for Change**

22. There are three key objectives for the implementation of these proposals:
- Achieving greater value for money.
  - Ensuring the LSC greater control over Legal Aid expenditure under the forthcoming fixed fee regime.
  - Affording the LSC access to complete management information on the number, location and nature of requests for publicly funded advice and areas for concern in police practices, which can be investigated and acted upon if necessary.

## Section 4 – The Proposal

23. Both the Duty Solicitor Call Centre and CDS Direct would be expanded to deal with own client work. All requests for publicly funded legal advice at the police station would go via the Duty Solicitor Call Centre who would register the case. If the matter falls within the scope of CDS Direct, then referral to private practice (either own solicitor or the Duty Solicitor) would only take place if an attendance were required (at an interview or identification parade, for example). The process is outlined below, and a flowchart showing how the Commission intends the changed system to operate can be found in **Appendix 3**.
24. Requests for legal advice where the client intends to pay privately for his or her legal advice will remain unaffected. The police will find out if the client intends to pay privately and if so, will contact the requested solicitor directly.
25. We envisage that CDS Direct should where possible deal with all publicly funded cases in circumstances where an attendance by the Duty Solicitor or the individual's own solicitor is not necessary. If an individual's case subsequently requires an attendance, it would be allocated to a chosen firm, or to a Duty Solicitor if no firm has been specified.
26. It should be noted that CDS Direct would provide all advice in areas within its remit, meaning cases restricted to telephone only advice. The chosen solicitor would not be contacted unless attendance was necessary. This system would provide the Commission with considerable management information on the number and location of all requests for police station legal aid.
27. For matters outside the scope of CDS Direct or those within scope but where an interview is arranged within the next 90 minutes of the time of the initial request, the Duty Solicitor Call Centre will contact the individual's preferred solicitor directly. Three attempts will be made to contact them within thirty minutes. If, after this time that solicitor either declines to attend or cannot be contacted, then the Duty Solicitor will be allocated. The police will inform the individual that their own solicitor either could not be contacted or was unavailable to attend.
28. Neither the allocation of Duty Solicitor slots nor the deployment of Duty Solicitor cases will be affected by these changes.
29. The Commission is in discussion with the Home Office and the Association of Chief Police Officers on possible changes to the PACE codes that would be needed to facilitate this change.
30. In circumstances where friends or relatives of the detained individual contact a supplier directly, if the matter is within the scope of the expanded CDS Direct service the supplier may provide advice without payment. Alternatively, the supplier may decline to provide advice and can suggest

that the friend or relative contact the police station so it can contact CDS Direct via the Duty Solicitor Call Centre.

31. If accepted, the expansion of Duty Solicitor Call Centre would take effect from 1 October 2007 and CDS Direct would expand as of 31 October 2007.

## Questions

1. Do you have any amendments or alternatives to the proposal put forward in this paper?
2. Is the scope of CDS Direct correct? In particular, could it be extended to cover other categories of case without detriment to the client or to his or her benefit? Do you have any suggestions for additional offences that should be included e.g. all summary only road traffic offences?
3. Do you think that when a client has requested his or her own solicitor and has then been advised by CDS Direct, the requested solicitor should be notified of the matter? If so, what form should this notification take?
4. Are there any other practical issues that should be addressed?
5. A separate Regulatory Impact Assessment has been published alongside this document. We would welcome comments on this.

## **Impact Assessment**

A draft Regulatory Impact Assessment will be published shortly to accompany this paper and will be available on the Legal Services Commission website. A full Regulatory Impact Assessment will then follow as part of the final scheme.

## Timetable and Responses

### Consultation Timetable

Date	Event
20 March 2007	Publish consultation document
1 May 2007	Consultation period ends
May 2007	Consultation outcome published
October 2007	Expanded service potentially implemented

The consultation will run until **1 May 2007**. All responses must be received by 5pm on this date and, along with any questions, should be addressed to:

Katherine Toms  
CDS Policy Team  
Legal Services Commission  
12 Roger Street  
London  
WC1N 2JL  
Email: [cds.directorate@legalservices.gov.uk](mailto:cds.directorate@legalservices.gov.uk)  
Fax: 0207 759 1051

If you e-mail your response to us, which we would encourage, please put the words 'consultation response' in the subject heading of the email. We will acknowledge receipt of all responses by email or post within one week of receipt.

### CDS Direct Tender Timetable

At present there is an ongoing tendering process for the running of the expanded CDS Direct. It should be noted that this process is being run concurrently with the consultation to allow sufficient time for 31 October 2007 implementation. Furthermore, it is being run subject to the outcome of this consultation and can be withdrawn if necessary. In the event that these proposals go ahead, it is unlikely that the LSC will contract with only one supplier. The number of contracts we let will depend on the nature of the applications we receive and the coverage that they offer.

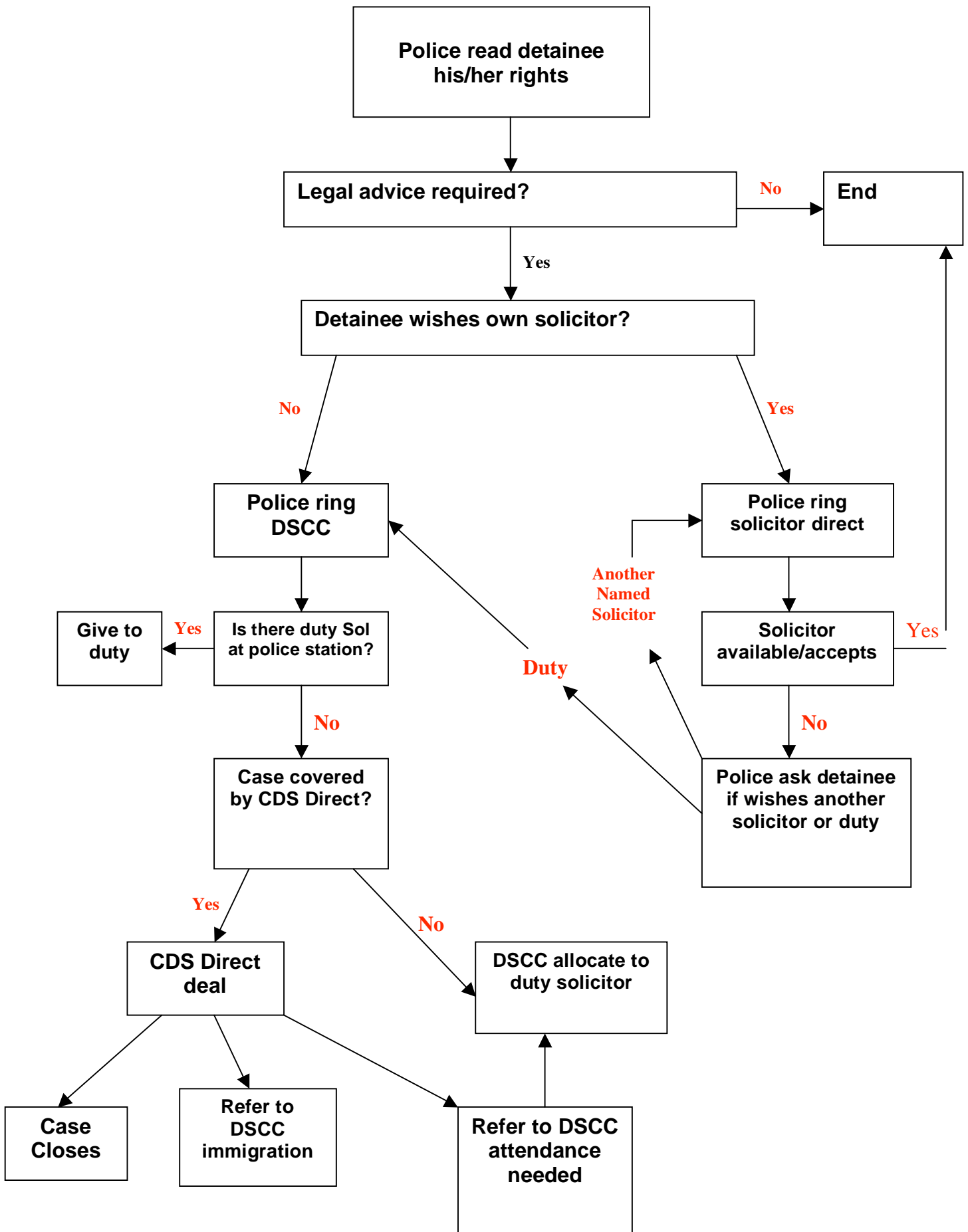
Date	Event
1 February 2007	Invitation to submit and Expression of Interest published
9 March 2007	Closing date for submitting Expressions of Interest
2 April 2007	Short listing of applications completed and Invitation to Tenders Published
21 May 2007	Closing date for submission of full tenders
2 July 2007	Contracts with successful bidders awarded
October 2007	Expanded service potentially implemented

**Appendix 1. – Matters that are restricted to telephone only advice and are at present dealt with by CDS Direct where the duty solicitor is requested**

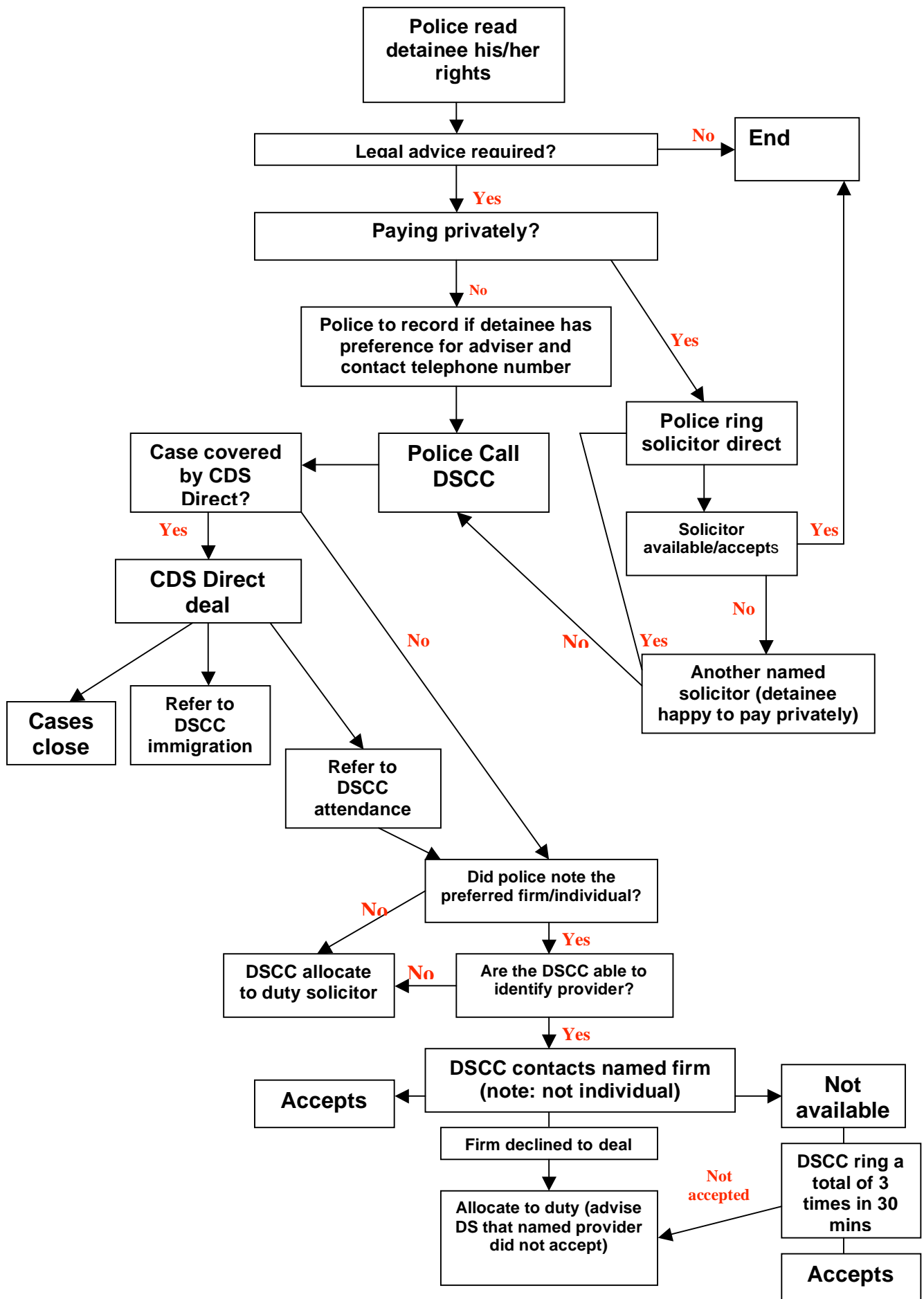
**General Criminal Contact Specification Part B 3.6.17-18**

17. In the following cases, you may provide Police Station Telephone advice only and you shall not claim from public funds for any Police Station Attendance unless one of the exceptions in paragraph 18 below applies:
- (a) Client detained in relation to a non-imprisonable offence;
  - (b) Client arrested on a bench warrant for failing to appear and being held for production before the court, except where the solicitor has clear documentary evidence available that would result in the client being released from custody in which case attendance may be allowed provided that the reason is justified on file;
  - (c) Client arrested on suspicion of:
    - (i) Driving with excess alcohol who is taken to the Police Station to give a specimen (Section 5 Road Traffic Act 1988);
    - (ii) Failure to provide a specimen (Sections 6, 7 and 7A Road Traffic Act 1988);
    - (iii) Driving whilst unfit/drunk in charge of a motor vehicle (Section 4 Road Traffic Act 1988).
  - (d) Client detained in relation to breach of police or court bail conditions.
18. You may attend the Police Station to advise on any Matter falling within paragraph 17 above if one of the following exceptions applies and the Sufficient Benefit Test is satisfied:
- (a) An interview or an identification procedure is going to take place;
  - (b) The Client is eligible for assistance from an appropriate adult under the PACE Codes of Practice;
  - (c) The Client requires an interpreter or is otherwise unable to communicate over the telephone;
  - (d) The Client complains of serious maltreatment by the police;
  - (e) The investigation includes another alleged offence which does not fall within paragraphs 17(a) to (d) above;
  - (f) You are already at the same Police Station, in which case you may attend the Client but may not claim more than the Police Station Telephone Advice fixed fee. If any of the above exceptions apply then you must endorse the reasons for attendance on file, otherwise your Claim will be limited to the Police Station Telephone Advice fixed fee.

**Appendix 2. - Duty Solicitor Call Centre Flowchart-Current Position**



**Appendix 3. - Duty Solicitor Call Centre Flowchart- Own Client excluding private paying via Duty Solicitor Call Centre**



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