



**AMENDMENTS TO GENERAL CRIMINAL CONTRACT**

**Changes to Early Cover:  
Response to Consultation**

## Contents

- 1 Introduction and Background
- 2 Overview of the Consultation Responses
- 3 LSC Response
- 4 Further Actions

**Appendix A** List of Respondents

**Appendix B** Government Code of Practice Criteria

## 1. Introduction and Background

1.1 This document is the post-consultation response from the Legal Services Commission (LSC) following the consultation on Changes to Early Cover. The Consultation launched on 8 December 2006 and closed on 2 January 2007.

This document covers:

- the background to the consultation
- a summary of the responses to the consultation
- the next steps following this consultation.

1.2 After introducing means testing in the magistrates' court on 2 October 2006, a number of issues have been raised by providers, that the LSC are keen to address. One of the concerns related to the Early Cover scheme, whereby providers would be paid a fixed fee of £75 plus VAT in circumstances where they had assisted the client with completing the means forms and represented that client at the first hearing, but the client subsequently failed the means test (although passed the interests of justice test). The feedback, that prompted this consultation, was that the conditions relating to Early Cover were difficult if not impossible to meet in some circumstances.

1.3 The consultation paper invited comments on the Commission's proposal to change the Early Cover scheme to make payment available when an application form is submitted within six working days following the date of first instruction (provided that this is on or before the date of the first hearing). This would replace the current situation where the Early Cover payment is only paid when the application form is submitted within two working days of the client being charged.

## Early Cover Consultation Response

1.4 The following chart shows the overall provision for work done before a decision is made:

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)

1.5 This report summarises the responses received, including how the consultation process has influenced the further development of the proposals consulted upon to shape the final policy.

1.6 Further copies of this document can be obtained by contacting Sarah Bullock at the address below:

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Email: [sarah.bullock@legalservices.gov.uk](mailto:sarah.bullock@legalservices.gov.uk)

1.7 This report is also available on the LSC's website at: [www.legalservices.gov.uk](http://www.legalservices.gov.uk)

## 2. Overview of the Consultation Responses

2.1 A total of five responses were received from three firms of solicitors and two representative bodies. The details of the respondents can be found at Appendix A.

2.2 Generally, respondents concluded that the changes proposed to the Early Cover scheme arrangements were welcome, and were an improvement on the existing scheme;

*“There is nothing in the proposed changes to which we object”.*

2.3 Respondents were supportive of the principle of means testing;

*“I wholeheartedly endorse the principle of means testing” and “We support the principle that those who can afford to pay for their defence should do so”.*

2.4 However, respondents also suggested that more fundamental changes could be implemented;

*“This change does not go far enough”.*

2.5 Respondents made several suggestions of alternative schemes that could operate in place of the Early Cover scheme. Suggestions made through the Consultation Process were;

1. Guaranteed Payments for first hearings (providing that there has been a successful interest of justice test)
2. Reviewing the requirements for clients who have mental disorders
3. Further relaxation of the requirements in relation to partner’s signatures

## Early Cover Consultation Response

4. Further simplification of the application process including forms and their evidential requirements
5. Introduction of Recovery of Defence Costs Orders in the magistrates' court

Many of these suggestions had been considered previously. As set out in section 4 below, we will assess the viability of the suggested changes to the process. In considering earlier suggestions we have, however, ruled out any fundamental change in relation to points 1, 3 and 5 above at the current time, as these would undermine some of the fundamental principles of the current scheme, and would require primary legislation.

2.6 We are grateful to all those who took the time to produce a written response.

### 3. LSC Response

On the basis of the responses received, the Legal Services Commission (LSC) have decided to adopt the proposed contract changes. This is because respondents have commented that the changes are an improvement on the current scheme and therefore provide improved access to justice for clients.

As detailed in Derek Hill's letter of 23 November 2006 providers may claim Early Cover using the revised criteria from 27 November 2006. The amendments to the General Criminal Contract Specification Part B (Rules and Guidance on Performing Contract Work) Paragraphs 5.13.2 and 5.13.3 are set out below and will be incorporated into the Contract from April 2007.

#### Early Cover

**2. Where an application for a Representation Order is made and refused on means you may claim one Early Cover fee (see Part E Section 3.7) 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~~ sixth working day following the date of charge (or, if the client has been remanded in custody by the court, by ~~9am on the sixth working day following the date of charge~~ first instruction (provided that the date of first instruction is on or before the date of the first hearing));**
- (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 had not been granted or refused by ~~9am on the date~~ the start 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; and**
- (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) the conditions in Paragraph 5.13.2(d) & (e) have been met; and
  - (b) the Client proceeds to submit an application in accordance with the conditions in Paragraphs 5.13.2(a) & (b); and
  - (c) the subsequent determination of the application satisfies the conditions in Paragraph 5.13.2(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 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.

## 4. Further Actions

The current CDS Means Testing application process, including forms are being reviewed following feedback received from stakeholders and amendments that have taken place since 2 October, for example, in relation to partner's signatures. The new forms will be available from 29 January 2007.

In addition to the points covered by Consultation, feedback on means testing has also been obtained from the Criminal Defence Service Stakeholder Group, who made the following suggestions;

- Review the requirements for defendants in custody
- Review the requirements for people under 18 years of age

The Programme Team are currently reviewing the viability of these suggestions and that raised at 2.5 (2) above, using the data and client profile evidence collected since the introduction of means testing. These suggestions will be fully analysed, including impact assessment and full cost implications, before a decision is taken on whether any changes will be made.

## Appendix A

### Details of Respondents

The Law Society
LAPG
Haskell & Co Solicitors
The Robinsons
Clarke Kiernan

## Appendix B

### Government Code of Practice Criteria

The LSC abides by the Government Code of Practice on Consultation, which came into effect on 1 April 2004.

The six consultation criteria in the Code are:

- I. Consult widely throughout the process, allowing a minimum of 12 weeks consultation at least once during the development of the policy
- II. Be clear about who may be affected, what questions are being asked, and the timescale for responses
- III. Ensure that your consultation is clear, concise and widely accessible
- IV. Give feedback regarding the responses received and how the consultation process influenced the policy
- V. Monitor your department's effectiveness at consultation, including through the use of a designated consultation coordinator
- VI. Ensure that your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

The full text of the government code is available from the Cabinet Office website at: <http://www.cabinet-office.gov.uk/regulation/consultation/code>.