



AMENDMENTS TO GENERAL CRIMINAL CONTRACT

Changes to Early Cover

For consultation and proposed implementation on 5 January 2007

This consultation is for a period of **21 days** and ends on **2 January 2007** and all responses should be sent to:

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Note:

In accordance with the Freedom of Information Act 2000, the Legal Services Commission may publish your name and contents of your response unless you provide sufficient reasons for asking us not to. Please ensure that your response is marked clearly if you wish your response or your name to be kept confidential. In any event, confidential responses could still be disclosed in a summarised or anonymised format.

NARRATIVE

A Amendments to Early Cover

Background

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

Since Vera Baird's announcement about these changes, it was suggested by members of the profession that the amendments to Early Cover take effect as soon as possible. This has been agreed by the Minister who had always wanted the changes to be made immediately. The LSC will therefore meet any claims on this basis from the 27th November 2006.

Proposal

The Commission's proposal is to change the Early Cover scheme to make payment available when an application form is submitted within **5 working days** from the point of **first instruction** provided that the date of first instruction is on or before the date of the first hearing. This will replace the current situation where the Early Cover payment is only paid when the application form is submitted within **2 working days** of the client being **charged**.

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) |

General Criminal Contract Specification

In Part B, (Rules and Guidance on Performing Contract Work) amend Para 5.13.2 & 3

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 sixth working day following the date of 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 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 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.