

**AMENDMENTS TO GENERAL CRIMINAL CONTRACT AND DUTY SOLICITOR
ARRANGEMENTS**

For consultation and proposed implementation in April 2007

This consultation ends at 4:00pm on **9 February 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 the 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.

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The first section of this document contains a narrative explaining the proposed changes. The second section contains the proposed amendments. All amendments are shown in strike out (deletions) and underlined (additions).

Notes:

There will be consequential changes to guidance manuals as a result of the proposed amendments to the General Criminal Contract and Duty Solicitor Arrangements. For simplicity these amendments are not included in this document.

Section 1

Narrative on Proposed Amendments

A Revised Magistrates' Court Standard Fees

The Commission are implementing the revised standard fees recommended by Lord Carter in his report "Legal Aid: A market-based approach to reform" from April 2007. As stated in "Legal Aid Reform: the Way Ahead" we have taken into account the arguments put forward that rural and remote providers would be disadvantaged. Consequently, the revised fees will only be implemented in main urban areas (see below for details) from April 2007. Section A of the second part of this document contains the amendments that are needed to the General Criminal Contract to implement these changes.

- The revised fees will operate in the same way as the existing standard fee system;
- The revised standard fees include an element of travel and waiting;
- Travel and waiting will no longer be paid separately on an hourly basis;
- Revised non-standard fee claims should not include travel and waiting;
- The fees will apply to providers who are located in the designated areas (irrespective of where the work is done) and to work done in the designated areas (irrespective of where the provider is located);
- The new fees will be claimed in the same way as current arrangements using forms CDS6 (revised standard fees) and CDS7 (revised non-standard fees). New claim codes will be introduced in April 2007 which must be used for claiming the revised standard and non-standard fees;
- The revised fees for category 1 and category 2 cases published in Lord Carter's report were inclusive of VAT; they will appear net of VAT in the proposed Contract amendments (as do all other fees);
- Fees for category 3 (committals) were not included in Lord Carter's recommendations because it was anticipated that changes in the wider Criminal Justice System would have removed these from magistrates' court funding before April 2007. That has not happened and consequently revised fees for category 3 cases have been calculated on the same basis as the other fees.
- Although travel and waiting cannot be claimed separately where a revised standard fee is claimed, providers will be required to report the cost of travel and waiting. This information will be used to monitor the impact of introducing the revised fees and to assist us in working with Criminal Justice System partners on reducing waiting times at magistrates' courts.

Consultees are specifically invited to consider whether the implementation of these changes could have an adverse impact on work conducted at magistrates' courts located outside the designated areas.

The designated areas are listed below:

- The following Criminal Justice Areas:
Greater Manchester
London
Merseyside
West Midlands
- The following Local or Unitary Authority Areas:
Brighton & Hove
Bristol
Cardiff
Derby & Erewash

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Kingston-upon-Hull
Leeds & Bradford
Leicester
Nottingham
Portsmouth & Gosport
Newcastle-upon-Tyne & Sunderland (including Gateshead, North Tyneside, Blyth Valley and South Tyneside)
Sheffield
Southampton

B “Market Stability Measures”

In the following section of this paper there are draft amendments for each of the options outlined in our consultation paper ‘Market Stability Measures’ which was published on 28 November 2006. A draft Regulatory Impact Assessment of the proposals was published on 19 December 2006.

The proposals outlined in the consultation paper are currently the subject of a public consultation that closes on 24 January 2007.

These draft contract changes have been provided to assist providers in understanding the changes that would be necessary if any of the proposed options were to be selected. They are not intended to pre-empt or influence the outcome of the consultation but rather to enable a more informed response from stakeholders.

There are three objectives for the implementation of the proposals contained in ‘Market Stability Measures’.

- To ensure the sustainability of the provider base of legal service providers in the lead up to more fundamental changes to the procurement scheme;
- To maintain duty solicitor coverage throughout England and Wales between April 2007 and October 2007; and
- To enable firms to commence the restructuring process and thereby compete in the market more effectively.

In order to achieve these objectives the consultation paper outlines the four aspects of the current system that require change and proposes some options on how that change could be achieved.

The key changes that have been proposed are:

- Firstly, the introduction of a new method for allocating duty solicitor slots¹ for police station and court duty work. Draft amendments to the Duty Solicitor Arrangements that would be necessary to implement either of the two options proposed are contained at B1 of the following section;

¹ Slots are the period a duty solicitor is on call.

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- Secondly, changes to the current 'service requirements'² for duty solicitor cases. Draft amendments to the General Criminal Contract that would be necessary to implement either of the two options proposed are contained at B2 of the following section;
- Thirdly, to enforce the requirement that 80% of police station work, and to reinstate the requirement that 50% of magistrates court work, is undertaken by a designated fee earner. Draft amendments to the General Criminal Contract that would be necessary to implement the first option proposed are contained at B3 of the following section. No amendments are necessary to implement the second option; and
- Finally, that a moratorium be placed on issuing new duty solicitor slots in the absence of local need.

C Funding of Prescribed Proceedings

The Commission have previously consulted on changing the funding of prescribed proceedings from Advocacy Assistance to a representation order. This change was not introduced in October 2006 as planned as the LSC was involved in further work to confirm the claiming process. This work has now been completed and discussed with the Law Society, and the change will be introduced from April 2007. This would bring funding of prescribed proceedings in line with other criminal proceedings and would mean that individuals would have to pass a means test in order to be represented in proceedings in the magistrates' court funded by the Criminal Defence Service. The interests of justice test will be applied by the Representation Authority in accordance with schedule 3 of the Access to Justice Act 1999. These cases will be remunerated under the standard fee or revised standard fee scheme.

The amendments to the Contract are contained in section 2. The majority of these were subject to the previous consultation but some additional amendments have been included for clarity. These additional amendments have been made to Part B Rules 4.3 and 6.3.

D Services Cases

The Army, and through them, the RAF and Royal Navy are content that accredited representatives may now advise Service Personnel when they are being questioned by the Royal Military Police. Previously, only a solicitor could advise Service Personnel, but this rule is now modified to include Accredited Representatives.

This change has been made at the request of providers who regularly advise Service Personnel.

Consultees are specifically requested to consider whether the service requirements for these cases should be the same as those agreed for other duty solicitor police station work following the outcome of consultation on 'Market Stability Measures'. See section B above.

E Reintroduction of Means Testing

² The scope of Duty Solicitor services and obligations are included within the Contract (Part B, Section 8)

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Following the reintroduction of means testing in the magistrates' court on 2 October 2006, changes were introduced by the Commission, with respect to payment for completion of forms that have not yet been incorporated into the General Criminal Contract. The changes were notified to providers by letter on 27 September and 4 October 2006 and they are already operating under the revised arrangements. The amendments included in this consultation are only intended to update the Contract to reflect these changes. The relevant extracts from Derek Hill's letter of 4 October 2006 are provided below for reference:

"We will also allow a payment of £25 + VAT for helping the client fill in the form where Early Cover is not paid. For this payment to be made you will need to have given advice to a client that although their case is one which would, in all probability, satisfy the interests of justice test they would not satisfy the means test. Your file will need to record why you considered the case would satisfy loJ test, but you will not be required to make the application to the court. This payment will only be available to you if that client does not then go on to instruct you as a private client; and advice will need to have been given within 10 working days of your client being charged or summonsed for the offence in question."

And

"Where a representation order is granted, we confirm that the LSC will allow up to 30 minutes for the completion of all relevant forms namely the CDS 14, the CDS 15, the CDS 16 and the CDS 17. This can then be claimed under the existing standard fee arrangement."

Section 2

Proposed Amendments

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A Revised Magistrates’ Court Standard Fees

Part E Remuneration under the General Criminal Contract

Amend Part E 3.5 as follows:

3.5 Magistrates’ Court Representation (including pre-Order cover under Part B, Rule 5.13) Hourly Rates

	National	London
Preparation (including taking instructions, interviewing witnesses, ascertaining the prosecution case, advising on plea and mode of trial, preparing and perusing documents, dealing with letters and telephone calls which are not routine, preparing for advocacy, instructing Counsel and expert witnesses, conferences, consultations, views and work done in connection with advice on appeal or case stated)	49.70	52.55
Advocacy (including applications for bail and other applications to the court)	62.35	62.35
Attendance at court where Counsel assigned (including conferences with counsel at court)	34.00	34.00
Travelling and waiting (see note below)	26.30	26.30
Routine letters written and telephone calls	3.90 per item	4.05 per item

Note:

The rates above are used to calculate the appropriate standard fee or Revised Standard Fee where one applies (see paragraphs 3.5.1 to 3.5.3 below) and are used as the standard hourly rate where a non standard fee or Revised Standard Fee is claimed (subject to paragraphs 3.5.18 to 3.5.24 below). They also apply to any work undertaken under a Representation Order granted by the Commission.

Travelling and waiting may only be Claimed in respect of standard fees and non standard fees.

Standard Fees and Revised Standard Fees

1. A standard fee or Revised Standard Fee, as appropriate, is payable for work undertaken in proceedings which are specified in the table below headed “Categories and Types of Proceedings”. Proceedings shall be treated for the purposes of this Section as forming part of one Case where they relate to one or more charges or informations which are preferred or laid at the same time or which are founded on the same facts or which form or are part of a series of offences (see Part B, Rule 5.8).
2. For the purposes of this Section, any proceedings specified (“the specified proceedings”) shall be treated as including all ancillary proceedings in respect of which a Representation Order is in force, whether or not the Order is the same as that in force in respect of the specified proceedings. Where a standard fee or Revised Standard Fee, as appropriate, is payable in respect of the specified proceedings:
 - (a) no separate fee shall be payable in respect of the ancillary proceedings; but
 - (b) all work done or costs incurred in the ancillary proceedings shall be treated as done or incurred in the specified proceedings.
3. “Ancillary proceedings” means:
 - (a) proceedings preliminary or incidental to the specified proceedings whether before that or another court, including related bail proceedings either in a magistrates’ court, the Crown Court or the High Court;
 - (b) proceedings arising from bail applications within (a) above, including appeals against the grant or refusal of bail and proceedings for offences under the Bail Act 1976;
 - (c) proceedings for contempt alleged to have been committed in the specified proceedings.
 - (d) proceedings in the Crown Court following committal for sentence by a magistrates’ court;

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- (e) proceedings to quash an acquittal under the Criminal Procedure and Investigations Act 1996;
- (f) proceedings under RSC Order 115 in Schedule 1 to the Civil Procedure Rules 1998 for confiscation or forfeiture.

Note:

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 paragraph 10(3)(a) or 13(2) of Schedule 3 to the Crime and Disorder Act 1998 and proceedings under Part A, Rule 3.2.1(b)(i)) shall be assessed and paid by the Crown Court and shall not form part of any Claim for remuneration under this Part.

The following definitions apply to those fees known as "Revised Standard Fees" and "Revised Non Standard Fees":

"Designated Area" means each of the following Criminal Justice Areas: Greater Manchester, London, Merseyside and West Midlands; and each of the following Local or Unitary Authority Areas: Brighton & Hove, Bristol, Cardiff, Derby & Erewash, Kingston-upon-Hull, Leeds & Bradford, Leicester, Nottingham, Portsmouth & Gosport, Newcastle-upon-Tyne & Sunderland (including Gateshead, North Tyneside, Blyth Valley and South Tyneside), Sheffield and Southampton;

"Revised Non Standard Fee" means (subject to the provisions of Paragraph 3.5) a non standard fee which applies to all magistrates' court work performed under a Representation Order by: (a) a Supplier whose Office is located within a Designated Area (including, for the avoidance of doubt, where the work is performed in a magistrates' court located outside of a Designated Area); or (b) a Supplier whose Office is located outside of a Designated Area but who is representing a Client in a magistrates' court located within a Designated Area;

"Revised Standard Fee" means (subject to the provisions of Paragraph 3.5) the fee which applies to all magistrates' court work performed under a Representation Order by: (a) a Supplier whose Office is located within a Designated Area (including, for the avoidance of doubt, where the work is performed in a magistrates' Court located outside of a Designated Area); or (b) a Supplier whose Office is located outside of a Designated Area but who is representing a Client in a magistrates' Court located within a Designated Area; and

"Supplier" has the same meaning as "Contractor".

Table: Categories and Types of Proceedings

Category 1	Category 2	Category 3
1.1 guilty pleas	2.1 contested trials	3.1 committal proceedings including those which are discontinued or withdrawn
1.2 uncontested proceedings arising out of a breach of an order of a magistrates' court (including proceedings in a magistrates' court relating to a breach of a Crown Court community rehabilitation order, community punishment order or suspended sentence)	2.2 proceedings which were listed and fully prepared for trial in a magistrates' court but are disposed of by a guilty plea on the day of trial before the opening of the prosecution case.	3.2 proceedings transferred under section 4 of the Criminal Justice Act 1987 or section 53 of the Criminal Justice Act 1991

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Category 1	Category 2	Category 3
1.4 proceedings (other than committal proceedings) relating to summary or either way offences which result in a bind over	2.4 contested proceedings relating to a breach of an order of a magistrates' court (including proceedings relating to a breach of a Crown Court community rehabilitation order, community punishment order or suspended sentence)	
1.5 proceedings arising out of a deferment of sentence (including any subsequent sentence hearing) under section 1 of the Powers of Criminal Courts (Sentencing) Act 2000	2.5 proceedings where mixed pleas are entered	

The standard fee and Revised Standard Fee levels for each category and the relevant limits are set out below in table A and table B respectively. In both table A and table B, the figures in square brackets are the London rates:

TABLE A: standard fee levels

	Lower Standard Fee £	Lower Limit £	Higher Standard Fee £	Higher Limit £
Category 1	173.45 [223.25]	298.45 [382.90]	417.20 [529.25]	517.10 [646.85]
Category 2	306.25 [392.95]	512.70 [651.00]	702.40 [882.65]	854.40 [1041.60]
Category 3	276.50 [349.75]	452.20 [548.25]	626.50 [735.30]	789.50 [841.55]

TABLE B: Revised Standard Fees*

	Lower Revised Standard Fee £	Lower Limit £	Higher Revised Standard Fee £	Higher Limit £
Category 1	221.59 [284.35]	298.45 [382.90]	477.41 [611.15]	517.10 [646.85]
Category 2	378.46 [484.60]	512.70 [651.00]	792.71 [1005.49]	854.40 [1041.60]
Category 3	357.87 [406.46]	452.20 [548.25]	734.56 [888.85]	789.50 [841.55]

Note:

****The following transitional arrangements apply to Revised Standard Fees:***

Revised Standard Fees and Revised Non Standard Fees shall apply to those Cases where the Representation Order is granted on or after [x] April 2007.¹ For those Cases where there is more than one Representation Order, Revised Standard Fees and Revised Non Standard Fees shall apply where the earliest Representation Order in the Case is granted on or after [x] April 2007.

¹ Implementation date to be confirmed.

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4. Subject to paragraph 3.5.5, where proceedings forming one Case fall within more than one category, the proceedings shall be treated as forming part of the higher or highest in value of the categories concerned.
5. Where a Case includes proceedings referred to in the Table of Categories and Types of Proceedings at items 3.1 and 3.2, the Cases shall be treated as if all the proceedings were category 3 proceedings.
6. Subject to paragraph 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 (table A above) or the Revised Standard Fee table (table B above) 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 (table A above) applies, or where there is a change of firm assigned under a Representation Order issued on or after [x] April 2007 in proceedings to which the Revised Standard Fee table (table B) 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.
7. Subject to paragraph 3.5.5, where proceedings have not been concluded but a warrant of arrest has been issued, the proceedings shall be treated as category 1 proceedings.

Proceedings to which standard fees and Revised Standard Fees do not apply

8. Standard fees and Revised Standard Fees shall not apply to proceedings:
 - (a) in which Counsel has been assigned under a Representation Order; or
 - (b) in which costs are allowed at an enhanced rate.

Items of Work covered by the standard fee

9. The items of work included in the standard fee calculation are as follows:
 - (a) any preparation within the meaning set out in the Hourly Rates table in section 3.5 including listening to, or viewing, any tape or video recording of interviews or evidence;
 - (b) routine letters written and routine telephone calls;
 - (c) advocacy, including bail applications made in a magistrates’ court, the Crown Court or the High Court;
 - (d) work done by a fee-earner acting as agent for the Solicitor assigned under the Representation Order;

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- (e) unassigned Counsel's preparation and advocacy.
- (f) These are known as the "core costs" and include the costs of any Advocacy Assistance required by the Contract to be claimed under the Order.

Items of Work covered by the Revised Standard Fee

9A The items of work included in the Revised Standard Fee calculation are set out in paragraph 3.5.9 above. In addition, the Revised Standard Fee includes an element for travelling and waiting time of fee-earners and Unassigned Counsel. However, travelling and waiting does not form part of the core costs for the purposes of calculating the allowance of Revised Standard Fee under paragraphs 3.5.13 to 3.5.14 inclusive below.

Standard Fees and Revised Standard Fees: Further Provisions

- 10. Where you act for more than one Client in proceedings forming a single Case, the Claim for payment of a standard fee shall cover all the Clients represented by you under one or more Representation Orders.
- 11. Where a Representation Order is granted to a Client in respect of more than one charge, offence or information, the Claim for payment of a standard fee shall cover all the charges, offences or informations that form part of one Case.

Costs additional to the Standard Fee and Revised Standard Fee

- 12. The following costs shall be payable in addition to the standard fee:
 - (a) travelling and waiting time of fee-earners and Unassigned Counsel, which shall be payable at the rate provided in the Hourly Rates table in section 3.5; and
 - (b) Disbursements.

12.A Disbursements shall be payable in addition to the Revised Standard Fee.

12.B For the avoidance of doubt, travelling and waiting time of fee-earners and Unassigned Counsel shall not be payable in addition to any Revised Standard Fee or in respect of any Revised Non Standard Fee.

12.C Notwithstanding the provisions of paragraph 3.5.12B, you must record all travelling and waiting time of fee-earners and Unassigned Counsel in respect of each Revised Standard Fee and each Revised Non Standard Fee Claimed. You must report that travelling and waiting time to us in accordance with the provisions of Part C of this Specification when you make each Claim and you must ensure that you use the correct Claim codes notified to you in guidance which we will issue from time to time.

12.D Your compliance with the reporting requirements for travelling and waiting set out in paragraph 3.5.12.C above will be important to give a record of the time that you and Unassigned Counsel are spending travelling and waiting. We will use that information to monitor the impact of the inclusion of travelling and waiting as an element within each Revised Standard Fee and to help us work with Criminal Justice System partners on reducing waiting times at magistrates' courts.

Allowance of Standard Fees and Revised Standard Fees

- 13. A lower standard fee or lower Revised Standard Fee, as appropriate, will be allowed where the core costs would not, if they had been assessed, have exceeded the lower limit.
- 14. Where the core costs claimed exceed the lower limit, the core costs will be assessed in accordance with hourly prescribed rates and, if the core costs allowed:
 - (a) do not exceed the lower limit, the lower standard fee or lower Revised Standard Fee, as appropriate, will be payable;
 - (b) exceed the lower limit but do not exceed the higher limit, the higher standard fee or higher Revised Standard Fee will be payable;
 - (c) exceed the higher limit, the core costs will be allowed as assessed.

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15. The hourly rates specified in the Hourly Rates table in section 3.5 shall apply to the costs claimed, subject to the provisions of paragraphs 3.5.18 to 3.5.24.
16. The costs payable in proceedings to which these provisions apply shall (subject to any deductions or reductions made in respect of wasted costs or late claims) be:
 - (a) the relevant standard fee or Revised Standard Fee together with the costs determined as costs additional to the standard fee or Revised Standard Fee; or
 - (b) where the core costs allowed exceed the higher limit of the relevant standard fee or Revised Standard Fee, the costs as assessed on an ex post facto basis.
17. Where a warrant of arrest has been issued and a Claim has been made prior to the final disposal of the proceedings, any costs which would have been payable upon the final disposal of the proceedings shall be reduced to the extent that they formed part of the costs previously claimed.

Reduced and Enhanced Rates

18. In respect of any individual item of work, we may allow fees at less than the relevant basic prescribed rates specified in the Hourly Rates table in section 3.5 where it appears to us reasonable to do so having regard to the competence and dispatch with which the work was done.
19. We may allow fees at more than the relevant prescribed rates specified in the Hourly Rates table in section 3.5 where it appears to us, taking into account all the relevant circumstances of the case, that:
 - (a) the work was done with exceptional competence, skill or expertise; or
 - (b) the work was done with exceptional dispatch; or
 - (c) the case involved exceptional circumstances or complexity.
20. Where we consider that any item of work should be allowed at more than the prescribed rate, we shall apply to that item of work a percentage enhancement in accordance with the provisions below.
21. In determining the percentage by which fees should be enhanced above the prescribed rate we shall have regard to:
 - (a) the degree of responsibility accepted by the solicitor and his or her staff;
 - (b) the care, speed and economy with which the case was prepared;
 - (c) the novelty, weight and complexity of the case.
22. Except in proceedings that relate to serious or complex fraud, the percentage above the relevant prescribed rate by which fees for work may be enhanced shall not exceed 100 per cent.
23. Where proceedings relate to serious or complex fraud, the percentage above the relevant prescribed rate by which fees for work may be enhanced shall not exceed 200 per cent.
24. We may have regard to the generality of proceedings to which these provisions apply in determining what is exceptional.

B “Market Stability Measures”

B1: Duty Solicitor Slot Allocation

Duty Solicitor Arrangements

Amend paragraphs 6.3 and 6.4 as follows:

Option 1: Historically Based Allocation

- 6.3 For each Local Scheme the Commission shall maintain a list of slots. CDS Suppliers will be allocated a number of ~~one~~ slots on the Local Scheme list in proportion to the total value of [Duty Solicitor Advice and Assistance work at Police Stations they have performed/Advice and Assistance at Police Stations work they have performed / Advice and Assistance at Police Stations and any other Local Scheme work they have performed] between [dates of period to be specified by the Commission following consultation] under that Local Scheme as against the total value of that work performed by all CDS Suppliers during that period for every Duty Solicitor employed by that CDS Supplier who is a member of under that Local Scheme . For the avoidance of doubt, in allocating slots under this provision, the Commission shall only take into account the work Claimed during the relevant period.
- 6.4 Rota, Panel and Call In Schemes will be based on the Local Scheme lists. Rota slots will be allocated to CDS Suppliers in accordance with the slots on the Local Scheme list.

Option 2: Six Month Rota

- 6.3 For each Local Scheme the Commission shall maintain a list of slots. CDS Suppliers will be allocated one slot on the Local Scheme list for every Duty Solicitor employed by that CDS Supplier who is a member of that Scheme as at [dates to be Specified by the Commission following consultation].
- 6.4 Rota, Panel and Call In Schemes will be based on the Local Scheme lists. Rota slots will be allocated to CDS Suppliers in accordance with the slots on the Local Scheme list.

B2: Service Requirements

General Criminal Contract Specification

Part B Rules and Guidance on Performing Contract Work

Amend paragraph 8.2.1 to 8.2.12

Option 1:

8.2 Service requirements for Police Station Duty Solicitor work

1. In Police Station Duty Solicitor cases the services set out in this Section shall be provided as specified in the table below:

Type Of Work	Duty Solicitor	Accredited Representative*	Probationary Representative*	Solicitors With PSQ*	Solicitor Without PSQ*
Accept initial call from Call Centre Service?	<u>YES</u>	<u>YES</u>	<u>YES</u>	<u>YES</u>	<u>NO</u>
Provide initial telephone / in person advice?	<u>YES</u>	<u>YES</u>	<u>YES**</u>	<u>YES</u>	<u>NO</u>
Attendance ?	<u>YES</u>	<u>YES</u>	<u>YES**</u>	<u>YES</u>	<u>NO</u>

Unless specified otherwise, references to “Duty Solicitor Representative” in this section means a Duty Solicitor, a Solicitor holding the Police Station Qualification, an Accredited Representative or a Probationary Representative (except for indictable only offences).

* Must be in the full or part-time employment of, or a partner in the same firm or organisation as, the Duty Solicitor. For Guidance on what we mean by employment, see paragraph 8.7 below.

** Not indictable only offences

by a Police Station Duty Solicitor, or an Accredited Representative in the full or part time employment of, or a partner in the same firm or organisation as, the Duty Solicitor. You may deploy an Accredited Representative to undertake Police Station Duty Solicitor work in accordance with paragraph 8.2.11 below. For Guidance on what we mean by employment, see Subsection 8.7 below.

2. Cases referred by the Call Centre Service to you whilst ~~one of your~~ nominated Duty Solicitors is on Rota duty must be accepted unless the nominated Duty Solicitor ~~named on the Rota~~ is already engaged in connection with another Client at a Police Station or at a hearing of an application for a warrant of further detention or an extension of such a warrant or at an armed forces custody hearing or a conflict of interest arises. If the Duty Solicitor Representative is already at the same Police Station when a Client requests the Duty Solicitor, he or she shall notify the Call Centre Service when a request for advice is accepted. If a conflict of interest arises the case must be referred back to the Call Centre Service.
3. You may accept a case referred by the Call Centre Service if the nominated Duty Solicitor ~~named on the Rota~~ is unavailable for one of the reasons set out in paragraph 8.2.2 above but providing you have ~~another~~ Duty Solicitor Representative available to accept the case without delay who is able to arrange attendance at the Police Station, if necessary, within 45 minutes.

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4. You may accept Panel and Back-up cases referred by the Call Centre Service and must use all reasonable endeavours to do so.
5. With written prior approval from us you may use non-Duty Solicitor staff to receive calls from the Call Centre Service, and such staff may accept a referral from the Service provided that:
 - (a) we are satisfied that the staff concerned have been effectively trained to undertake such a role; and
 - (b) there are clear procedures in place for such staff to follow which ensure that referrals are not accepted unless there is a Duty Solicitor Representative available to make first contact with the Client immediately and which ensure that referrals are passed to such Solicitors immediately; and
 - (c) a Duty Solicitor Representative is available to make first contact with the Client immediately and is able to arrange attendance at the Police Station, if necessary, within 45 minutes.
6. Subject to paragraph 8.2.8 and paragraph 8.2.6(a) below, the following services shall be provided once a case has been accepted:
 - (a) except in the case of Former CDS Direct Pilot Cases where a CDS Direct Pilot Telephone Adviser has been involved, initial advice by a Duty Solicitor Representative personally by speaking to the Client either on the telephone or, if the Solicitor is at or adjacent to the Police Station and can immediately advise the Client in person. Where the police refuse to permit the suspect to speak to the Duty Solicitor Representative on the telephone, the solicitor may attend the Police Station. If the Client is incapable by reason of drunkenness or violent behaviour of speaking to the Solicitor, initial advice may be postponed. Other circumstances in which initial advice may be postponed include sleep periods or where an interpreter is required. The Duty Solicitor Representative shall make arrangements to provide initial advice as soon as the Client is capable of speaking to him or her. ~~In Former CDS Direct Pilot Cases, nothing in this paragraph shall prevent an Accredited Representative, rather than a Solicitor, from having responsibility for the first contact with a Client after a CDS Direct Pilot Telephone Adviser has had involvement with that Client;~~
 - (b) attendance at the Police Station to provide advice and to attend all police interviews with the Client during the Duty Period where the Client has been arrested in connection with an offence;
 - (c) attendance at any identification parade, group or video identification or confrontation;
 - (d) attendance at the Police Station where the Client complains of serious maltreatment by the police;
 - (e) the provision of advice where a Client is to be charged with an offence on the implications of the caution which will be given when the Client is charged. Consideration must also be given as to whether attendance should take place at that time bearing in mind whether it is possible to give confidential telephone advice and the possible consequences of not making a statement when being charged;
 - (f) representation in connection with an application for a warrant of further detention under Part A, paragraph 2.2.1(d) of this Specification;
 - (g) if a police interview and any identification parade, group or video identification or confrontation is postponed to a time when the Duty Solicitor is no longer on duty or, if on a Panel, where it is no longer convenient to act as Duty Solicitor, he or she must make arrangements to ensure that the Client continues to receive advice either by a Duty Solicitor or Own Solicitor. The Duty Solicitor may continue to act on an Own Solicitor basis.
7. ~~Except in Former CDS Direct Pilot Cases where a CDS Direct Pilot Telephone Adviser has been involved, the Duty Solicitor shall give initial advice. On giving initial advice under 8.2.6(a) above, or on you receiving a referral of a CDS Direct Pilot Case from the Call Centre Service instructing you to provide Police Station Attendance, the Duty Solicitor shall exercise his or her discretion whether it is in the interests of the Client for him or her or, if appropriate, an Accredited Representative to attend the Police Station.~~ Attendance is mandatory under paragraphs 8.2.6(b) to (d) and (f) above, unless exceptional circumstances exist (see paragraph 8.2.8 below). In assessing whether attendance is necessary the Duty Solicitor Representative shall consider whether advice can be given over the telephone with sufficient confidentiality and if he or she can communicate effectively with the Client by this means.

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8. If exceptional circumstances exist which justify non-attendance at the Police Station, the Duty Solicitor Representative shall record his or her decision not to attend, including details of the exceptional circumstances and the reasons for the decision on the case file. Exceptional circumstances could arise if a Client expressly instructs the Duty Solicitor Representative not to attend. Exceptional circumstances are less likely to arise in the case of paragraph 8.2.6(d).

9. If the Client is a Services Person at a services establishment or elsewhere assisting with an investigation by the Services Police and suspected of offences contrary to the Services Discipline Acts where:
 - (a) the investigation involves any offences which cannot be dealt with summarily; or
 - (b) the offence appears to the interviewing Services Police to be serious,the Duty Solicitor shall attend personally upon the Client where he or she considers that such attendance is necessary for the protection of the Client's interests.

10. If the Client is a Services Person requiring representation within the UK at a custody hearing before a judicial officer under the Armed Forces Discipline Act 2000, the Duty Solicitor shall attend personally upon the Client to provide Advice and Assistance (including Advocacy Assistance).

11. The services described in paragraph 8.2.6 above shall be provided as follows:
 - ~~(a) initial advice under paragraph 8.2.6(a) above shall be provided by a Duty Solicitor where the case has been referred by the Call Centre Service or accepted as a Duty Solicitor case at the Police Station. For the avoidance of doubt, in Former CDS Direct Pilot Cases where a CDS Direct Pilot Telephone Adviser has been involved, nothing in this paragraph shall prevent an Accredited Representative, rather than a Solicitor, from undertaking the first contact with a Client;~~
 - ~~(b) the services referred to at paragraphs 8.2.6(b) to (e) above shall be provided by a Duty Solicitor or, where appropriate, by an Accredited Representative;~~
 - ~~(c) the services referred to at paragraphs 8.2.6(f) to (g), 8.2.9 and 8.2.10 above may only be provided by a Duty Solicitor or an Accredited Representative who is a Solicitor where the case has been referred by the Call Centre Service or accepted as a Duty Solicitor case at the Services establishment.~~

12. If the Duty Solicitor Representative providing the services ~~are provided under (b) or (c) above by an Accredited Representative or Solicitor~~ who is not an employee of the firm, the travel time claimed shall not exceed 45 minutes each way. Where this rule is applied the fares and/or mileage claimed should not exceed that which would have been paid had the journey lasted less than 45 minutes.

- ~~13.~~ 13. The Client shall be informed before advice is given of the status of the individual giving such advice.

The remaining paragraphs in this section are renumbered accordingly.

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Option 2:

8.2 Service requirements for Police Station Duty Solicitor work

1. In Police Station Duty Solicitor cases the services set out in this Section shall be provided as specified in the table below:

Type Of Work	Duty Solicitor	Accredited Representative*	Probationary Representative*	Solicitors With PSQ*	Solicitor Without PSQ*
Accept initial call from Call Centre Service ?	<u>YES</u>	<u>YES</u>	<u>NO</u>	<u>YES</u>	<u>NO</u>
Provide initial telephone /in person advice?	<u>YES</u>	<u>YES</u>	<u>NO</u>	<u>YES</u>	<u>NO</u>
Attendance?	<u>YES</u>	<u>YES</u>	<u>NO</u>	<u>YES</u>	<u>NO</u>

* Must be in the full or part-time employment of, or a partner in the same firm or organisation as, the Duty Solicitor. For Guidance on what we mean by employment, see paragraph 8.7 below.
~~by a Police Station Duty Solicitor, or an Accredited Representative in the full or part time employment of, or a partner in the same firm or organisation as, the Duty Solicitor. You may deploy an Accredited Representative to undertake Police Station Duty Solicitor work in accordance with paragraph 8.2.11 below. For Guidance on what we mean by employment, see Subsection 8.7 below.~~
Unless specified otherwise, references to “Duty Solicitor Representative” in this section means a Duty Solicitor, a Solicitor holding the Police Station Qualification or an Accredited Representative.

Paragraphs 8.2.3 –8.2.13 are amended as for option 1 above.

B3: Performance Standards

General Criminal Contract Specification

Part D Quality and Performance Standards

Amend 5.2 as follows:

5.2 Limitations on Work Conducted by Non-Designated Staff

We expect most work to be conducted by designated fee-earners.

In particular:

- (a) we will expect 80% of instances of Police Station Advice and Assistance (both attendances and telephone advice) to be conducted by designated fee-earners; and**
- (b) we will expect 50% of instances of advocacy at the magistrates’ court to be conducted by designated fee-earners.**

1. It is accepted that, in order to have flexibility in the management of work and in the changing demands upon fee-earners and their time, ~~offices~~you may need to use non-designated staff. We have taken this into account in setting the levels of target compliance.

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2. Where a non-designated fee-earner is used, ~~the office~~ you must ensure that the fee-earner is competent and that they are effectively supervised.
3. A designated fee-earner may or may not be employed by ~~the offices~~ you.

C Funding of Prescribed Proceedings

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).

~~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;~~
 - ~~(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;~~

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- ~~(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, and remain unchanged for the purposes of these proposed amendments.

Insert new Part A, 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 3.3 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~~

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~~being provided by a court Duty Solicitor acting as such) or in the Crown Court under 3.2.1(d) above.~~

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

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 B Rules and Guidance on Performing Contract Work

Amend Part B, Rule 4.3 as follows:

4.3 Advocacy Assistance Merits Test

Before commencing work you must apply one of the following merits tests (where appropriate):

- (a) ~~Magistrates' court Advocacy Assistance provided by an Own Solicitor under Part A, paragraph 3.2.1(b)(i) (breach of a civil order) and paragraphs 3.2.1(b)(ii) to (v) (Crime and Disorder Act 1998, Football Spectators Act 1989) and 3.2.1(d)(ii) (parenting orders in the Crown Court) of this Specification.~~

Amend Part B, Rule 6.3 by deleting paragraphs 6.3.1 to 6.3.6 and substituting with the following:

6.3 Criminal Proceedings

Magistrates' Court Advocacy Assistance

~~Breach of a financial order in the magistrates' court Advocacy Assistance~~

1. The funding of prescribed proceedings in the magistrates' court is by way of Representation Order, which is applied for in the same way as a Representation Order for other criminal proceedings. The interests of justice test will be applied by the Representation Authority in accordance with schedule 3 of the Access to Justice Act 1999. Because of this change, much of the following is now redundant. Advocacy Assistance remains for the narrow category of proceedings mentioned in 3.2.1. (b) (where

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provided by the Court Duty Solicitor), hearings concerning warrants of further detention, and prescribed proceedings in the Crown Court.

2. You may self grant Advocacy Assistance for an appeal to the Crown Court. When determining whether Advocacy Assistance should be granted the Advocacy Assistance merits test for this Unit of Work should be applied.
3. The merits test is based **only** on the general reasonableness test, i.e. an application for Advocacy Assistance may be refused if it appears unreasonable that approval should be granted in the particular circumstances of the case. When determining an application for Advocacy Assistance for an appeal, the prospects of success and merits of the appeal should be taken into account as well as whether the Client has reasonable grounds for taking the proceedings;
4. The relevant upper limit applies to work authorised.
5. As these proceedings are prescribed under section 12(2)(g) of the Act, in the Crown Court, a Representation Order may be sought on application to us under Rule 5.7 in this Part. For the avoidance of doubt, in the magistrates' court, prescribed proceedings are now funded by way of Representation Order.

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

D Services Cases

General Criminal Contract Specification

Part B Rules and Guidance on Performing Contract Work

Amend Rule 3.4 as follows:

3.4 Serious Service Offences/Armed Forces Custody Hearings

~~A Representative who is not a Solicitor shall not advise a~~ **A Client who is being investigated in connection with a Serious Service Offence or at an application to extend detention in military custody before a judicial officer under the Armed Forces Discipline Act 2000 may be advised by a Solicitor or an Accredited Representative.**

1. Military suspects being investigated for military offences other than summary only ~~must~~ may receive Advice and Assistance from a Solicitor or an Accredited Representative. ~~and shall not be advised by a non-Solicitor Representative.~~
2. The Armed Forces Discipline Act 2000 amends the relevant Service Acts by introducing an entitlement for services personnel to be legally represented at a pre-charge custody hearing. Representation at such hearings must be provided by a Solicitor, or an Accredited Representative who is a Solicitor ~~not a non-Solicitor Representative.~~

Amend 8.2.9 – 11 as follows:

9. If the Client is a Services Person at a services establishment or elsewhere assisting with an investigation by the Services Police and suspected of offences contrary to the Services Discipline Acts where:
 - (a) the investigation involves any offences which cannot be dealt with summarily; or
 - (b) the offence appears to the interviewing Services Police to be serious, the Duty Solicitor or an Accredited Representative shall attend personally upon the Client where he or she considers that such attendance is necessary for the protection of the Client's interests.
10. If the Client is a Services Person requiring representation within the UK at a custody hearing before a judicial officer under the Armed Forces Discipline Act 2000, the Duty Solicitor or Accredited Representative shall attend personally upon the Client to provide Advice and Assistance (but only including Advocacy Assistance if the representation is provided by the Duty Solicitor or an Accredited Representative who is a solicitor).
11. The services described in paragraph 8.2.6 above shall be provided as follows:
 - (a) initial advice under paragraph 8.2.6(a) above shall be provided by a Duty Solicitor where the case has been referred by the Call Centre Service or accepted as a Duty Solicitor case at the Police Station. For the avoidance of doubt, in Former CDS Direct Pilot Cases where a CDS Direct Pilot Telephone Adviser has been involved, nothing in this paragraph shall prevent an Accredited Representative, rather than a Solicitor, from undertaking the first contact with a Client;
 - (b) the services referred to at paragraphs 8.2.6(b) to (e) above shall be provided by a Duty Solicitor or, where appropriate, by an Accredited Representative;
 - (c) the services referred to at paragraphs 8.2.6(f) to (g), 8.2.9 and 8.2.10 above may only be provided by a Duty Solicitor or an Accredited Representative who is a Solicitor where the case has been referred by the Call Centre Service or accepted as a Duty Solicitor case at the Services establishment.

If services are provided under (b) or (c) above by an Accredited Representative or Solicitor who is not an employee of the firm, the travel time claimed shall not exceed 45 minutes each way. Where this rule is

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applied the fares and/or mileage claimed should not exceed that which would have been paid had the journey lasted less than 45 minutes.

E CDS Act

General Criminal Contract Specification

Part B Rules and Guidance on Performing Contract Work

Insert new paragraph 5.14 as follows:

- 5.14 In circumstances where an Early Cover fee is not paid and you have advised the Client that, although their Case is one which would, in all probability, satisfy the Interests of Justice Criteria they would not satisfy the means test, you may Claim a 'refused means test form completion fee' of £25.00 (excluding VAT) provided that all of the following conditions are also met:
- (a) you must have advised the Client within 10 working days of the days of the day on which the Client was charged or summonsed with the offence in question;
 - (b) your file must record why you considered the case would satisfy the Interests of Justice Criteria (but you will not need to make the application for a Representation Order to court);and
 - (c) the Client does not proceed to instruct you as a private client in respect of that Case.

Part E Remuneration under the General Criminal Contract

Insert new paragraph 3.5.11A as follows:

- 11.A Where a Representation Order is granted and the Client needs assistance with completing the relevant forms, you may spend up to 30 minutes providing such assistance. This item of work may then be included within your calculation of and Claimed under the appropriate standard fee or Revised Standard Fee (or non standard fee or Revised Non Standard Fee, where relevant).

Insert new paragraph 3.8

3.8 Refused means test form completion fee: £25.00 (excluding VAT)

Note:

The fee may only be claimed if the conditions described in Part B 5.14 are met.