

## **AMENDMENTS TO GENERAL CRIMINAL AND GENERAL CIVIL CONTRACTS**

**For Consultation & Subsequent Implementation in April 2005**

- A Amendments to General Criminal Contract Only**
- B Amendments to General Civil Contract Only**
- C Amendments to General Criminal and General Civil Contracts**
- D Amendments to Criminal Guidance Manuals**

## A. Amendments To The General Criminal Contract Only

### 1. CDS Direct

The following Contract amendments are necessary to implement the CDS Direct Pilot which has been subject to separate consultation. The following amendments reflect the policy contained in the most recent consultation document and are subject to amendment depending on the outcome of that consultation.

#### Contract amendments:

#### Specification Part A – Scope and Structure of Contract Work

### 2. Criminal Investigations

Amend Paragraph 2.2.1(b) as follows:

- 1(b) “**Police Station Telephone Advice**, that is telephone Advice and Assistance, where there is no attendance at the Police Station, to a Client who:
- i) is arrested and held in custody at a Police Station; or
  - ii) is a Volunteer; or
  - iii) is being interviewed in connection with a Serious Service Offence; or
  - iv) is detained under Schedule 7 of the Terrorism Act 2000.

except that, during the CDS Direct Pilot, all CDS Direct Pilot Cases are excluded from such Police Station Telephone Advice (and no payment in respect of them will be made) - see Part B Section 9.”

#### Part B – Rules and Guidance on Performing Contract Work

Amend the heading to Section 8 and insert a new first paragraph in italics as follows:

#### “8 **Scope of Duty Solicitor Service and Service Obligations – Except for CDS Direct Pilot Cases**

Please see Section 9 in this Part for details of the CDS Direct Pilot (which starts on [Date]) and CDS Direct Pilot Cases. CDS Direct Pilot Cases are excluded from the

scope of this Section (and we will make no payment to you in respect of any of them)."

Amend Paragraph 8.2.6 as follows

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 personally by speaking directly to the client on the telephone unless the Solicitor is at or adjacent to the Police Station and can immediately advise the Client in person, or the police refuse to permit the suspect to speak to the Duty Solicitor on the telephone, in which case he or she may attend the Police Station. 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.

Amend Paragraph 8.2.7 as follows:

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 (e) and (g) above, unless exceptional circumstances exist (see paragraph 8.2.8 below). In assessing whether attendance is necessary the Duty Solicitor 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."

Amend Paragraph 8.2.11 as follows:

- "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 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."

Insert new Paragraph 8.2.16(a) as follows:

“16. Any attendance must be for the purposes of providing legal advice that could not be given over the telephone to the Client. You may not claim for an attendance when the advice could have been provided reasonably by way of telephone advice. If we consider that the advice could have been provided reasonably over the telephone, we may disallow the costs of any attendance at the Police Station, however, we will take into account any evidence on file that attendance was considered necessary at the time the decision to attend was made. The file must show that attendance was expected to materially progress the case beyond initial advice. If you were already at the same Police Station, we may cap your Claim to no more than the value of the Police Station Telephone Advice fixed fee if we consider that advice could have been provided reasonably over the telephone.

(a) Paragraph 16 above shall not apply to any attendance which is undertaken on instruction from the Call Centre Service on a CDS Direct Pilot Case.”

Add a new Section 9 to Part B as follows:

## **“9 The CDS Direct Pilot**

### **Explanation of CDS Direct Pilot**

1. Under the CDS Direct Pilot some Police Station Telephone Advice for clients at the Police Station will be provided centrally rather than by the Duty Solicitor.
2. CDS Direct Pilot Telephone Advisers will provide Police Station Telephone Advice to the conclusion of the case in respect of all Police Station Telephone Advice only cases (as set out in Part B, paragraphs 8.2.17(a) to (d) of the Specification), unless one of the exceptions set out in paragraphs 8.2.18(a) to (e) applies or there are other reasons identified by the CDS Direct Pilot Telephone Adviser which mean that telephone advice or attendance by a Duty Solicitor is necessary.
3. In addition, in Specified Regional CDS Pilot Schemes, CDS Direct Pilot Telephone Advisers will provide telephone advice for all non indictable only offences up to the time when a Duty Solicitor is required to attend the Police Station. A Duty Solicitor may be asked to provide Police Station Telephone Advice in these Schemes instead of CDS Direct, even though the offence is non indictable only, if there are special reasons why the case should be handled by a Duty Solicitor rather than a CDS Direct Pilot Telephone Adviser (such as the CDS Direct Pilot Telephone Adviser having a conflict of interest) (a “Special Request”).
4. You must not claim (and we will pay) for any telephone advice to clients in the Investigations Class in respect of cases where CDS Direct has given telephone advice.
5. As soon as CDS Direct decide that a Duty Solicitor should be deployed to give telephone advice or to attend at the Police Station, the case ceases to be a CDS Direct Pilot Case and the normal service requirements in Section 8.2 of the Specification apply, with the exception of the obligation to supply telephone advice under paragraph 8.2.6 (a).

6. Where a Duty Solicitor is asked to advise or attend on a case which has been handled by CDS Direct, the Duty Solicitor may ask an Accredited Representative to conduct the first attendance.

### **General Provisions and Definitions**

7. The “CDS Direct Pilot” commences on [Date] and will end on [four weeks’] notice by us.
8. The “CDS Direct Pilot” is the pilot in which the Call Centre Service refers certain requests for Police Station Advice and Assistance (“CDS Direct Pilot Cases”) to a CDS Direct Pilot Telephone Adviser (instead of to the Duty Solicitor).
9. During the CDS Direct Pilot:
  - (a) all CDS Direct Pilot Cases are excluded from the scope and service obligations of Part B Section 8; and
  - (b) you are not entitled to (and must not claim) any payment for any work in the Investigations Class of Work in respect of CDS Direct Pilot Cases; and
  - (c) in respect of cases excluded from the definition of CDS Direct Pilot Cases under paragraph 10(b)(iii) below you are not entitled to (and must not claim) any payment for any telephone calls in the Investigations Class of Work.
10. “CDS Direct Pilot Cases” are:
  - (a) all requests for Police Station Advice and Assistance by a Duty Solicitor within the scope of Part B, paragraphs 8.2.17(a) to (d) of the Specification (i.e. Police Station Telephone Advice only cases) except where the request is a Special Request or relates to an indictable only offence; and
  - (b) in the Specified Regional CDS Direct Pilot Schemes only, all requests for Police Station Advice and Assistance by a Duty Solicitor except where:
    - (i) the request is made in relation to an indictable only offence; or
    - (ii) at the time the request is made, a time has been arranged for the Client to be interviewed by the Police; or
    - (iii) telephone advice has been given by a CDS Direct Pilot Telephone Adviser in response to a request and the point has been reached at which a Duty Solicitor is now required to attend; or
    - (iv) the request is a Special Request.

11. “Former CDS Direct Pilot Cases” are cases which have been CDS Direct Pilot Cases but which no longer meet the definition of a CDS Direct Pilot Case.
12. The “Specified Regional CDS Direct Pilot Schemes” are such local Duty Solicitor Schemes that we notify to you in writing. As at the start of the CDS Direct Pilot, these are:  
  
Bootle & Crosby  
Knowsley  
Liverpool  
Southport  
St Helens  
Wirral  
Boston  
Spalding
13. “Special Request” is a request identified to you as such by the Call Centre Service. For example (without limitation) Special Requests may include requests where the Call Centre Service considers that, because of a conflict of interest or other good reason, the request should be handled by the Duty Solicitor (instead of by a CDS Direct Pilot Telephone Adviser) or considers that Advocacy Assistance is required, or considers that one of the criteria in Part B, paragraph 8.2.18 of the Specification (i.e. exceptions to Police Station Telephone Advice only cases) applies.
14. “CDS Direct Pilot Telephone Adviser” means a person approved by us to be employed or engaged specifically to provide telephone advice for the purposes of the CDS Direct Pilot.”

## **Part E Remuneration under the General Criminal Contract**

Amend paragraph 2.2 as follows:

	National	London
Availability during Duty Period	4.20 (to a max of 100.80)	4.25 to a max of 102.00)
Police Station Advice and Assistance other than by telephone		
- Duty Solicitor (unsocial hours)	69.05	69.05
- Duty Solicitor (other hours)	52.00	56.20
- Own Solicitor	52.00	56.20
Travelling and waiting		
- Duty Solicitor (unsocial hours)	69.05	69.05
- Duty Solicitor (other hours)	52.00	56.20
- Own Solicitor	28.80	28.80
Police Station Telephone Advice fixed fee (including all telephone calls whether “routine”	30.25 per Claim	31.45 per Claim

or “advice”, (except CDS Direct Pilot Cases for which no fee may be claimed).		
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**The provisions set out below apply to all Criminal Investigations that commence after 00.01 on 1 February 2004:**

1. Except in the case of CDS Direct Pilot Cases (in respect of which no fee is claimable by you) One Police Station Telephone Advice fixed fee may be claimed by you per investigation provided that you undertake at least one telephone call during the investigations. An “investigation” is defined as all the work undertaken for one Client in respect of an arrest or arrests made at the same time. No further fixed fee may be claimed by you if any further arrest of the same Client takes place any time at a Police Station or other place of detention whilst the investigation continues.
2. An investigation ends either when the Client is charged or summoned, or the investigation concludes in any other way e.g. no further action by the police.
3. An arrest or warrant for breach of bail is a separate investigation and attracts a separate Police Station Telephone Advice fixed fee, except where the arrest is made at an Police Station or other place of detention during an investigation for which a fixed fee payment is already claimable.

(4, 5, 6, and 7 remain unchanged)

## **2. Police Station Representatives and Solicitors Attending the Police Station**

A consultation paper on the above was issued on 15 November 2004. The closing date of this consultation is 10 January 2005. Details of the Contract amendments necessary to implement the proposed policy were included as part of the consultation document and are duplicated below. These proposed amendments are subject to change pending the outcome of consultation on the policy.

### **Contract Amendments:**

#### **Part B Section 1 General Rules – all Authorised Levels of Service**

Insert the following new paragraph after Part B paragraph 1.5:

#### **“1.6 Transitional Provisions Applying to Police Station Attendances Amendments implemented on [XX April 2005]”**

**The following transitional provisions apply to the changes set out in the Contract Notice of Amendment which took effect on [XX April 2005]:**

<b><u>Amendment</u></b>	<b><u>Transitional Arrangements</u></b>
<b><u>Certain police station attendances to be payable as disbursements (Part B,</u></b>	<b><u>Applies to all acts of Police Station Advice and Assistance that take place</u></b>

<u>Rule 3.3 and paragraph 8.2)</u>	<u>after 00.01 [XX April 2005]</u>
<u>Police station attendances must be undertaken by a Solicitor with the Police Station Qualification or by a Representative</u>	<u>Applies to all acts of Police Station Advice and Assistance that take place after 00.01 [XX April 2005]</u>

The Contract as amended by notice from [XX April 2005] will apply to all work undertaken since commencement of the above provisions. Work that was undertaken prior to the commencement of the above provisions will be subject to the Contract rules which applied prior to the notice of amendment i.e. as if the contract notice had not taken effect on [XX April 2005].”

## **Part B Section 3 Police Station Advice and Assistance – Own Solicitor**

Amend paragraph 3.3:

### **3.3 Use of Representatives**

“Police Station Advice and Assistance may be given by a Representative.

In Own Solicitor cases, initial advice may be given by a Representative.

When you delegate work to a Representative who is not directly employed by your firm, i.e. under a contract of service, you must ensure that the individual is appropriately supervised and the Guidance below is complied with.

If we consider that you have failed to comply with the supervision requirements set out in this Rule then you are not entitled to payment under this Contract for any work which was not properly supervised.

A Probationary Representative may not provide Police Station Advice and Assistance on an indictable only offence. From 1 April 2003, a Probationary Representative may only provide Police Station Advice and Assistance for the firm (which must hold a General Criminal Contract) at which his or her supervising solicitor is based.

A Representative shall not be employed as a special constable or in any other capacity that may cause a conflict of interest when undertaking criminal defence work.

If work is delegated to a Representative or agent who is not an employee of the firm, ~~the travel time claimed shall not exceed 45 minutes each way. or to an agent who is not an employee of the firm, the work done and disbursements incurred by this Representative or agent shall not be remunerated under this Contract except as a disbursement. The costs payable by the Commission to the supplier shall not exceed 50 per cent of the hourly rates set out in Part E of the Specification which are applicable to a Solicitor providing Advice and Assistance in the same Unit of Work.~~

**In calculating these costs, duty solicitor serious offence rates shall not apply and travel time claimed shall not exceed 45 minutes each way. Disbursements actually and reasonably incurred by the Representative or agent shall be paid in full. You shall note the breakdown of costs and disbursements incurred by the Representative on the file.**

**If work is delegated to a Representative who is not an employee of the firm but whose supervising solicitor is an employee of the firm, these costs may be claimed in the normal way but the travel time claimed shall not exceed 45 minutes each way.**

**The Regional Director may elect not to apply the provisions in the 3 paragraphs above. If this election is made and work is delegated to a Representative or agent who is not an employee of the firm, these costs may be claimed in the normal way but the travel time claimed shall not exceed 45 minutes each way.**

**A Solicitor may be suspended from acting as a supervising Solicitor for Probationary Representatives if serious shortcomings in supervision have been identified to you and remedial action has not been taken or is ineffective. If suspended, the Solicitor has a right of appeal to the regional duty solicitor committee under paragraph 7.13(d) of the Duty Solicitor Arrangements 2001.**

1. You may use staff not employed by you, subject to the Performance Standards. Any work conducted for you by staff not employed by you is subject to the Quality Standards. This includes work conducted by staff who are designated by you and those who are not.
2. If you deploy a Representative not employed under a contract of service by your firm, you must be satisfied that the Representative is competent to do the work i.e. has the necessary skill, knowledge and experience. The Representative must be a Solicitor or currently registered as a Probationary or Accredited Representative.
3. Before attending the Police Station, the Representative must have the telephone number of the conducting Solicitor (including an out of hours number if appropriate).
4. The Representative must be able to contact the conducting Solicitor (or another Solicitor in the firm with sufficient experience of Police Station work) in case the Representative requires guidance as to how to proceed with the case when advising and assisting at the Police Station.
5. A written report on the case must be submitted to the conducting Solicitor by the Representative once the attendance at the Police Station has concluded and at the latest by the next working day.
6. A supervising Solicitor for a Probationary Representative shall document, within 7 days of the Representative's inclusion on the Register,

- (a) the dates at which a further test needs to be passed at 6 months and all tests within 12 months to avoid suspension from the Register,
- (b) the process that supervising Solicitor will use to ensure that the Probationary Representative's work is quality assured.

Failure to comply with this requirement will be construed as a serious shortcoming in supervision justifying suspension.”

Insert new paragraph 3.7.1 and renumber remaining paragraphs accordingly:

### **3.7 Service Requirements for Own Solicitor Police Station Advice and Assistance**

- 1. “Own solicitor police station attendances may only be undertaken by a Solicitor holding the Police Station Qualification under the Law Society's Criminal Litigation Accreditation Scheme, or by a Representative.”

## **Part B Section 8 Scope of Duty Solicitor Service and Service Obligations**

Amend Paragraph 8.2.1:

### **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 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.”

Amend Paragraph 8.2.11:

- 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;
  - (b) the services referred to at paragraphs 8.2.6(b) to (f) 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(g) to (h), 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.~~ the work done and disbursements incurred by this Representative or agent shall not be remunerated under this Contract except as a disbursement. The costs payable to a supplier shall not exceed 50 per cent of the hourly rates set out in Part E of the Specification which are applicable to a Solicitor providing Advice and Assistance in the same Unit of Work.

In calculating these costs, duty solicitor serious offence rates shall not apply and travel time claimed shall not exceed 45 minutes each way. Disbursements actually and reasonably incurred by the Representative or agent shall be paid in full. You shall note the breakdown of costs and disbursements incurred by the Representative on the file.

If work is delegated to a Representative who is not an employee of the firm but whose supervising solicitor is an employee of the firm, these costs may be claimed in the normal way but the travel time claimed shall not exceed 45 minutes each way.

The Regional Director may elect not to apply the provisions in the 3 paragraphs above. If this election is made and work is delegated to a Representative or agent who is not an employee of the firm, these costs may be claimed in the normal way but the travel time claimed shall not exceed 45 minutes each way.”

### **3. Other Changes to the Contract Specification**

#### **3.1 Authority to undertake Crown Court, High Court and House of Lords Work.**

The Contract is defined in Clause 1.18 as a franchise contract. The Commission has always treated holders of the General Criminal Contract as authorised to provide representation in the Crown Court, Court of Appeal and House of Lords. This new paragraph sets this out expressly.

#### **Contract Amendments:**

##### **Part A Section 1 Introduction**

Insert the following new paragraph after paragraph 1.2.4:

“5 For the purposes of Regulation 13(1)(b) of the CDS (General) (No. 2) Regulations 2001 (and subject to Regulations 13(2) and 11 of those Regulations) you are authorised to provide representation in the Crown Court, Court of Appeal and House of Lords (this Contract being a crime franchise contract for the purposes of those regulations) and, in providing such representation, must comply with this Contract.”

3.2 It is proposed that the following change is made to clarify the transitional arrangements for Duty Solicitor Serious Offence rates implemented 31 October 2004.

**Contract Amendments:**

**Part B Section 1 General Rules – all Authorised Levels of Service**

Insert the following new paragraph after Part B paragraph 1.5:

**“1.6 Transitional Provisions Applying to Serious Offence Rates implemented on 31 October 2004”**

**The following transitional provisions apply to the changes set out in the Contract Notice of Amendment which took effect on 31 October 2004:**

<b><u>Amendment</u></b>	<b><u>Transitional Arrangements</u></b>
<b><u>Duty Solicitor Serious offence rates (Part E, paragraph 2.2)</u></b>	<b><u>Applies to all eligible acts of Police Station Advice and Assistance that take place after 00.01 31 October 2004</u></b>

**The Contract as amended by notice from 31 October 2004 will apply to all work undertaken since commencement of the above provisions. Work that was undertaken prior to the commencement of the above provisions will be subject to the Contract rules which applied prior to the notice of amendment i.e. as if the contract notice had not taken effect on 31 October 2004.”**

3.3 It is proposed that the following change is made to provide flexibility in how checks are made as to whether a bail to return will be effective.

**Contract Amendments:**

**Part B Section 3 Police Station Advice and Assistance – Own Solicitor**

Amend paragraph 3.7.8:

8. “An attendance at the Police Station for an ineffective bail to return may be disallowed if ~~telephone~~ checks were not made prior to the attendance to establish whether it would be effective.”

**Part B Section 8 Scope of Duty Solicitor Service and Service Obligations**

Amend paragraph 8.2.19:

19. “An attendance at the Police Station for an ineffective bail to return may be disallowed if telephone checks were not made prior to the attendance to establish whether it would be effective.”

3.4 The definition of a Very High Cost Case was amended, through regulation changes, in August 2004. This proposed change updates the definition in the Contract.

### **Contract Amendments:**

#### **Part B Section 7 Supplemental Rules – all Authorised Levels of Service**

Amend paragraph 7.12 as follows:

#### **7.12 Very High Cost Cases**

**“A CDS Supplier which has conduct of a case that is a very high cost case shall notify the Commission in writing as soon as is practicable.**

**A very high cost case is a case with regard to which: if the case proceeds to trial, that trial would be likely to last for 41 days or longer.**

~~(a) — If the case proceeds to trial, that trial would be likely to last for 25 days or longer; or~~

~~(b) — The defence costs with regard to any one defendant (or group of defendants represented by the same firm of solicitors) are likely to amount to £150,000 or greater (such sum to include the solicitor’s fees and disbursements, advocate’s fees and VAT).~~

**Any question as to whether a case fulfils the criteria above shall be referred to and decided by us.**

**Once a case has been committed, transferred or sent to the Crown Court for trial you shall consider whether the case satisfies or may satisfy the definition of a very high cost case. If it does or if you are in any doubt, you shall refer it to us within 7 days of committal, transfer or sending or any later date on which the criteria for a very high cost case are satisfied for the first time. A note should be available on file to confirm that you have complied with this Rule. Failure to do so will be treated as a breach of contract.”**

3.5 This proposed amendment is intended to clarify the role of the court duty solicitor in relation to a client who has his own solicitor (e.g. under a Representation Order). Essentially he is treated as an unrepresented client if it is a non business day and the own solicitor cannot be contacted (or it is unclear whether the client has his own solicitor).

### **Contract Amendments:**

#### **Part B Section 8 Scope of Duty Solicitor Service and Service Obligations**

Amend paragraph 8.5.2:

2. “If a Client wishes another Solicitor to act, the Duty Solicitor shall not act unless the named Solicitor is not available and the Client asks the Duty Solicitor to act on that occasion only. ~~If a Representation Order has been granted to a Client of another CDS Supplier, a court Duty Solicitor shall not act for that Client, unless instructed to act as agent for that CDS Supplier. If the court session takes place on a non-business day and the court Duty Solicitor is unable to ascertain whether a Representation Order has been granted or is unable to contact the CDS Supplier assigned under an Order, then the court Duty Solicitor may act on that occasion only provided that the Client agrees and the court Duty Solicitor takes all reasonable steps to notify the assigned CDS Supplier. A court Duty Solicitor shall not act for a Client who has his Own Solicitor unless the court session takes place on a non-business day and the court is unable to secure the Own Solicitor’s attendance (or is unable to determine whether the Client has his Own Solicitor). If the court Duty Solicitor represents a Client in these circumstances he shall take all reasonable steps to notify the client’s Own Solicitor as soon as possible after the hearing. The court Duty Solicitor may also act (unless prevented by local rules) as agent for the client’s Own Solicitor, but this shall not be claimed as Duty Solicitor work.”~~

3.6 These proposed amendments are intended to clarify when duty solicitor rates, and duty solicitor serious offence rates apply, and to correct an error in Part E 2.2.11(iv).

### **Contract Amendments:**

#### **Part E Section 2.2 Police Station Advice and Assistance**

Amend paragraph 2.2.11:

11. “Duty Solicitor serious offence rates may be claimed for Police Station Attendances provided that:
  - (a) the attendance is to advise a client under arrest for one or more of the following serious offences, either as a principal or as a secondary party, or who has been arrested on a warrant for failing to answer bail or an extradition warrant in respect of a case in which he or she is accused of such an offence:
    - (i) Treason (common law);
    - (ii) Murder (common law);
    - (iii) Manslaughter (Homicide Act 1957 and common law);
    - (iv) Causing death by dangerous driving (~~Section 1 Section 10~~ Road Traffic Act 1988);
    - (v) Rape (Section 1 Sexual Offences Act 2003);
    - (vi) Assault by penetration (Section 2 Sexual Offences Act 2003);

- (vii) Rape of a child under 13 (Section 5 Sexual Offences Act 2003);
  - (viii) Assault of a child under 13 by penetration (Section 6 Sexual Offences Act);
  - (ix) Robbery (Section 8 Theft Act 1968);
  - (x) Assault with intent to rob (common law);
  - (xi) Arson (Sections 1(1), 1(2) or 1(3) Criminal Damage Act 1971);
  - (xii) Perverting the course of public justice (common law);
  - (xiii) Conspiracy to defraud (common law);
  - (xiv) Kidnapping (common law);
  - (xv) Wounding or grievous bodily harm (Sections 18 and 20 Offences against the Person Act 1861);
  - (xvi) Conspiracy to commit any of the above offences (Section 1 Criminal Law Act 1977);
  - (xvii) Soliciting or inciting to commit any of the above offences (common law);
  - (xviii) Attempting to commit any of the above offences (Sections 1 or 1A Criminal Attempts Act 1981);
  - (xix) Any offence if the client is accused of possessing a firearm, shotgun or imitation firearm;
  - (xx) Any offence if the client is detained under section 41 of the Terrorism Act 2000.
- (b) ~~The Matter has been referred to the firm by the Duty Solicitor Call Centre or the Duty Solicitor Call Centre has been notified if the case is accepted whilst the solicitor is already at the Police Station. Duty Solicitor rates are payable.~~
- (c) The attendance is personally undertaken by a Duty Solicitor employed by the firm accepting the ~~casecall from the Duty Solicitor Call Centre.~~”

Insert new paragraphs 2.2.15 to 18 as follows:

**How to identify Duty Solicitor work**

- “15. Duty Solicitor work attracts higher rates than Own Solicitor work, and entails different service obligations (for instance, it may not be undertaken by a Probationary Representative). If work is deemed to be Duty Solicitor work, then Duty Solicitor rates apply and you must comply with the relevant service obligations.
16. Work is always deemed to be Duty Solicitor work if both (a) and (b) below apply:
- (a) The case is accepted from the Duty Solicitor Call Centre Service, or accepted at the Police Station as a Duty Solicitor case and notified to the Call Centre, and

(b) The work takes place before the end of the Duty Period (for rota cases) or is initial advice (for Panel and Back-up cases).

17. You may deem work to be Duty Solicitor work if either (a) or (b) below applies:

(a) The work takes place during a Duty Period (however the case was accepted), or

(b) (i) The case is accepted from the Call Centre Service or accepted at the Police Station as Duty Solicitor and notified to the Call Centre Service, and

(ii) The work is undertaken during the initial continuous period of custody.

18. All other attendances shall be treated as Own Solicitor.

**Examples of the split between Duty and Own Solicitor work:**

(a) Duty Solicitor is on rota from 6 pm to 6 am: Case is accepted from the Call Centre Service at 4 am and continues after the end of the rota period at 6 am. If the CDS Supplier continues to meet the requirements of the Duty Solicitor Arrangements and other contractual requirements for Duty Solicitor work, then Duty Solicitor rates can be claimed until the end of the Client's initial period of detention. Alternatively, once the Duty Period ends at 6 am and initial advice has been provided by the Duty Solicitor (or Accredited Representatives if CDS Direct Pilot hasve been involved), the CDS Supplier may convert to an Own Client basis, send a Probationary Representative if the Matter is non indictable only and claim Own Client rates from that point.

(b) For Panel and Back-up calls, once initial advice has been provided by the Duty Solicitor, the CDS Supplier may continue to meet the contractual requirements for Duty Solicitor work and claim Duty Solicitor rates or may convert to an own client basis and claim own client rates."

3.7 Definitions in Contract Specification to be duplicated in the Standard Terms for clarification.
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It is proposed that two definitions currently contained in Part E of the Contract Specification are duplicated in the Standard Terms for the purposes of clarity.

**Contract amendments:**

**Standard Terms Part A Introduction**

Insert the following definitions retaining alphabetical order:

““Business day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a bank holiday under the Banking and Financial Dealings Act 1971.

“Unsocial hours” means between the hours of 5:30pm and 9:30am on any business day and any time on a day which is not a business day.”

## **B Amendments to General Civil Contract Only**

### **1. Proposed Guidance – Payment for Referrals and Introductions – General Civil Contract Only**

Having received a number of complaints about firms paying referral fees, we consulted on the insertion of clause 12A.14 to prohibit contractors from making or receiving payments for referrals or introductions.

We received no objections to the proposed clause 12A.14 and so this provision was inserted into the contract standard terms and was effective from 1 April 2004.

Since then, one contractor who specialises in clinical negligence work has said that, in their view, the restriction in clause 12A.14 is too wide in that it prevents introductions/referrals in all Categories of Work. Having discussed the position in detail with the contractor, we consider that it may be reasonable to allow some exceptions to this clause but would like to take account of the views of contractors on this issue.

Referral arrangements may result in clients or potential clients being referred to distant solicitors. This can be inconvenient for clients and lead to extra costs being incurred. For some types of case, we believe that potentially vulnerable clients should have easy access to local solicitors. For other types of case, if they can be dealt with at no additional cost, they may be suitable to be dealt with under referral arrangements - provided that the client is informed of the arrangement and given the contact details of suitable alternative solicitors.

However, we remain of the view that most types of case should continue to be covered by the restriction. In our view the two categories of work that may be suitable to be excepted from the provisions of clause 12A.14 are clinical negligence and personal injury but we would welcome contractors' views on this.

We have prepared draft guidance to cover the possible clinical negligence and personal injury exceptions. The guidance also sets out certain safeguards. These are requirements which must be met in order that contractors may take advantage of the exceptions and the consequences of non-compliance with those requirements.

## **Contract amendment:**

### **Appendix B (General Guidance) of the Specification of the General Civil Contract**

The following draft guidance to be inserted at the end of Guidance on Operation of Contract:

#### **GUIDANCE ON OPERATION OF CONTRACT**

##### **Guidance on approach to Clause 12A.14**

##### **Scope and effect of Guidance**

1. “Clause 12A.14 sets out the restriction which applies in respect of payments for referrals or introductions.
2. Under this Guidance, subject to you complying at all times with the requirements set out below, we will not enforce Clause 12A.14 in respect of Contract Work in the Clinical Negligence and Personal Injury Categories of Work.
3. This Guidance sets out the action which we may take should you fail to comply with the requirements.

##### **The requirements**

4. In making referrals or introductions under the Categories of Work specified in paragraph 2 of this Guidance you must:
  - 4.1 ensure that the referral/introduction is in the Client’s best interests;
  - 4.2 disclose to the Client at the time of referral or introduction details of your arrangement with the Contractor to whom you are referring/introducing them. This will include the value of the fee (or other financial benefit) which you will receive as a result of making the referral/introduction; and
  - 4.3 inform the Client, before you refer or introduce them to a Contractor with whom you have an arrangement, that they are free to choose another solicitor and give the Client the names and contact details of two or more suitable alternative Contractors (at least one of whom must be in the Client’s locality).
5. In receiving referrals or introductions under the exceptions set out in paragraph 2 of this Guidance you:
  - 5.1 must ensure that the referral/introduction is in the Client’s best interests and, where you conclude that this is not the case, give the Client the name and contact details of two or more suitable alternative Contractors (one of which must be in the Client’s locality) without delay;

- 5.2 must disclose to the Client, before taking their instructions, details of your arrangement with the party making the referral/introduction to you. This will include the value of the fee (or other financial benefit) which you will have pay for the referral/introduction;
- 5.3 must inform the Client, before taking their instructions, that they are free to choose another solicitor and give the Client the names and contact details of two or more suitable alternative Contractors (at least one of whom must be in the Client's locality); and
- 5.4 are undertaking to us that, if you are more distant from the Client than the referring Contractor is, you will not claim any additional costs or disbursements because of that extra distance.

### **Consequences of your failure to comply with the requirements**

6. Where you fail to comply with the requirements, we reserve the right to take away your right to benefit from paragraph 2 above. That would mean that you may not make or receive (directly or indirectly) any payment or other financial benefit for the referral or introduction (directly or indirectly) of any Client or potential Client to another provider of publicly funded legal services or to you in any Category of Work for such period as we determine is reasonable in the circumstances. In addition, we may also apply such other contract sanction as we determine is reasonable in the circumstances.”

### **Questions**

Comments are welcome on all issues raised, but we particularly want to hear from respondents in relation to the following questions:

1. Should we enforce clause 12A.14 in respect of all Categories of Work (and not issue the guidance) and, if so, why do you think we think we should do this?
2. Do you agree that the exceptions to clause 12A.14 should be limited the clinical negligence and personal injury categories of work?
3. If you don't agree that the exceptions to clause 12A.14 should be limited to the clinical negligence and personal injury categories of work, which additional categories of work do you think should be included and why?
4. How do you think that the exceptions to clause 12A.14 will affect different-sized firms? Given the financial cost for receiving referrals / introductions, do you think that smaller firms will be able to take advantage of the exceptions to the same extent as bigger firms?

## C AMENDMENTS TO THE GENERAL CRIMINAL AND GENERAL CIVIL CONTRACTS

### 1. Proposed Amendment to Standard Terms

The words “in all other respects”, added in error when clause 12A.9 was amended earlier this year, are to be deleted.

#### **Amendments:**

Amend the General Civil Contract Schedule in force from 1 April 2005 as shown below:

“With effect from [DATE] the words “, in all other respects,” are deleted from Clause 12A.9.”

Amend Clause 12A.9 of the General Criminal and General Civil Contract Standard Terms by deleting the words “in all other respects” as shown below:

“Subject to Clause 12A.11 (**civil**) 12A.12 (**criminal**), you must pay any third parties whom you instruct in connection with Contract Work within three months of submitting any Claim to us that includes their charges and, ~~in all other respects~~, in accordance with the terms of your agreement with them. If you fail to pay a third party in accordance with this Clause 12A.9, we reserve the right to pay the third party and deduct the amount of the payment from any monies payable from us to you under this Contract. We will not do so without first giving you at least 14 days notice, in which you may either confirm to us that you have made payment or demonstrate to our reasonable satisfaction that you have reasonable grounds for not making payment (at present).”

### 2. Proposed Guidance – Exercise of Devolved Powers

Proposed guidance is to clarify that the Commission will exercise a degree of flexibility in managing Contracts in respect of Devolved Powers.

## Contract amendment:

### Appendix B (General Guidance) of the Specification of the General Civil Contract and Part G Guidance on Contract Sanctions of the Specification of the General Criminal Contract

The following draft guidance to be inserted following Guidance on Contract Sanctions:

#### **GUIDANCE ON OPERATION OF CONTRACT**

##### **Guidance on Contract management in respect of Contractors' exercise of Devolved Powers**

1. “There may be occasions when, as part of our general Contract management procedures, and to avoid our having to issue a Devolved Powers notice under Clause 22.11 of the Contract Standard Terms, we will contact you in respect of particular matters or cases or types of matter or case to discuss your exercise of Devolved Powers.
2. Where, as a result of those discussions, we determine that it is appropriate for us to manage your exercise of Devolved Powers in a way which does not involve us in issuing a Devolved Powers notice, we may opt to direct you not to exercise certain Devolved Powers in respect of particular matters or cases or types of matter or case for a given period.
3. Where we do choose to manage your Contract in this way, before the expiry of the given period, we will reassess, discuss with you and then notify you whether we will be keeping the restriction on your exercise of Devolved Powers in place or whether we will be lifting it.
4. Any imposition by us of a restriction on your exercise of Devolved Powers under our general Contract management procedures shall not preclude us, where on the particular facts we consider it appropriate to do so, from issuing a Devolved Powers notice at any time in respect of any case or matter or types of matter or case (including during the period during which any restriction shall already apply and including in respect of any case or matter or types of matter or case).”

### **3. Applying Findings**

#### **Proposed Amendments to Specifications**

These proposed amendments are to allow costs findings under the General Civil Contract to be applied for up to six years where there has been an intervention, an Official Investigation or a Report and to make minor amendments to the relevant Rules under both the General Civil and General Criminal Contracts. The General

Criminal Contract already allows costs findings in respect of misclaiming to be applied for up to six years in such circumstances.

### **General Civil Contract**

Add the following words at the start of Rule 2-15.2:

“Subject to Rule 2-15.2A,”

Add a new Rule 2-15.2A as set out below:

“2A If this Contract has terminated because of an intervention by your Relevant Professional Body (or any other body with a similar power) or either (a) an Official Investigation is underway or (b) we have received a Report that we reasonably consider requires us to do so, we may apply findings to all cases commenced under this Contract (or any previous contract it has replaced) where costs have been claimed from us in the previous six years. In such circumstances, where such a case has been assessed because findings have been applied to it under Rule 2-15.5, that assessment shall be cancelled and replaced by an assessment under this Rule.”

### **General Criminal Contract**

Add the following words at the end of Part C Rule 1.10:

“Where a case has been assessed because findings have been applied to it under Rule 1.10(b) then, where Rule 1.10(a) subsequently applies, the Assessment shall be cancelled and replaced by an Assessment under Rule 1.10(a).”

## D AMENDMENTS TO CRIMINAL GUIDANCE MANUALS

### 1. Duty Solicitor Manual

The following is a summary of the proposed amendments to this manual. A revision marked version of the manual (excluding appendices) is attached for information

#### General

All references to the CDS Head Office have been changed to the CDS Policy Team reflect the LSC organisational review.

#### 1. Duty Solicitor Manual

No changes.

#### 2. Court Scheme

2.5 Para 2 has been reworded to reflect the May 2004 scope changes more accurately and to refer to the court duty solicitor's ability to advise represented clients on non-business days.

2.13 This has been amended to reflect the May 2004 scope changes more accurately.

2.15 The contact details in this paragraph have been updated.

#### 3. Police Station Cover

3.20 This paragraph has been amended to reflect the proposed changes in the Police Station Attendances consultation.

#### 4. Selection

4.1 This paragraph has been amended to reflect the proposed changes in the Police Station Attendances consultation.

4.2 Para 1 has been amended to clarify its meaning (we originally used 'non-indictable' to mean cases that were not indictable-only).

Para 1 has also been amended to clarify the position if CDS Direct has been involved in a case.

- 4.3 This paragraph has been amended to reflect the proposed changes in the Police Station Attendances consultation.
- 4.4 This has been amended to refer to the 2005 Police Station Register Arrangements (as amended for the Police Station Attendances consultation).
- 4.6 This paragraph has been amended to reflect the proposed changes in the Police Station Attendances consultation.
- 4.7 This paragraph has been amended to reflect the proposed changes in the Police Station Attendances consultation.
- 4.8 This paragraph has been amended to reflect the proposed changes in the Police Station Attendances consultation.
- 4.19 The contact details in this paragraph have been updated.

## **5. Temporary and Permanent Withdrawal from Schemes**

No changes

## **6. Suspension and Removal of Duty Solicitors**

- 6.18 The reference to the Legal Department has been removed. This should refer to the CDS Policy Team only.

## **7. Appeals**

- 7.2 This paragraph has been amended to reflect the proposed changes in the Police Station Attendances consultation.

## **8. Committees**

No changes

## **9. Own Client/Duty Solicitor Cases**

- 9.2 A reference to CDS Direct has been added into para 1.
- 9.4 Para 1 has been amended to clarify the position if CDS Direct has been involved.
- 9.5 Para 1 has been amended to clarify the position if CDS Direct has been involved.  
Para 2 has been amended to reflect the proposed changes in the Police Station Attendances consultation.

- 9.6 This paragraph has been amended to reflect the proposed changes in the Police Station Attendances consultation and to clarify that persons attending the police station need not necessarily be employees of the supplier.
- 9.7 Para 1 has been amended to clarify when cases can be 'converted' from duty to own solicitor.

### **Appendices**

Appendix 3N has been deleted as it is no longer appropriate in the light of the Police Station Attendances consultation.

Appendix 4B should contain the Police Station Register Arrangements in their amended form (as attached to the Police Station Attendances consultation).

## **2. Police Station and Court Duty Solicitor Costs Assessment Manual**

The following is a summary of the proposed amendments to this manual. A revision marked version of the manual (excluding appendices) is attached for information

### **General**

All references to the CDS Head Office have been changed to the CDS Policy Team to reflect the LSC organisational review.

#### **1. Introduction**

Transitional arrangements have been added for serious offence rates and the proposed rule in the Police Station Attendances consultation that certain attendances should be treated as disbursements.

#### **2. Regulatory Framework**

2.3 A reference to serious offence rates has been added.

#### **3. Clients entitled to advice at the police station**

3.1 Para 1 has been amended so that it more accurately reflects the scope of the scheme.

#### **4. Duty and Own Solicitors and Representatives**

4.2 The reference here is to the version of the Duty Solicitor Arrangements as amended in accordance with the Police Station Attendances consultation.

4.7 This has been redrafted to clarify what work must and may be treated as duty solicitor work.

4.8 This paragraph has been amended to reflect the Police Station Attendances consultation.

4.10 Para 1 (b) has been amended to clarify its meaning (we originally used 'either-way' to mean cases that were not indictable-only).

4.11 This paragraph has been extensively amended to reflect the Police Station Attendances consultation.

4.12 This paragraph has been amended to reflect the Police Station Attendances consultation.

4.13 This has been amended to refer to the amended para 4.7.

- 4.14 Para 1 has also been amended to clarify the position if CDS Direct has been involved in a case.
- 4.15 This paragraph has been amended to reflect the Police Station Attendances consultation and to clarify that persons attending the police station need not be employees of the supplier.  
The table has been amended to clarify the position if CDS Direct has been involved in a case.  
Para 2(e) has been amended to clarify the position if CDS Direct has been involved in a case.
- 4.16 Guidance on serious offence rates has been added.

## **5. Immigration**

No changes

## **6. Advice Abroad**

No changes

## **7. Payment for Police Station Work**

- 7.6 This has been amended so that bail-back checks need not be by telephone.

## **8. Relationship between Advice and Assistance and Representation Orders**

No changes

## **9. Assessment**

- 9.5 Para 2 (b) has been amended to reflect the Police Station Attendances consultation.

## **10. Court duty solicitor**

- 10.5 This paragraph has been amended in line with the proposed contract amendment to clarify the circumstances in which the court duty solicitor may act for a represented defendant on a non-business day.

### 3. Criminal Bills Assessment Manual

It is proposed that the following changes are made to this manual to reflect proposed changes to the General Criminal Contract in the light of:

- The commencement of various sections under the Criminal Justice Act 2003.
- The impact of the commencement of the Proceeds of Crime Act 2002
- Changes to the Contract implemented with effect from 31<sup>st</sup> October 2004.

And miscellaneous amendments raised as being necessary by practitioners by virtue of changes in various practices.

#### 1. Bail Provisions

Amend paragraphs 1.3.8 and 1.3.9 (High Court Proceedings within the Criminal Franchise Categories) to reflect the impact of Sections 16 and 17 of the Criminal Justice Act 2003 on bail provisions.

In addition changes are made to reflect the impact of the Proceeds of Crime Act in the funding and paying of restraint and confiscation proceedings.

8. The following is a summary of High Court proceedings within the criminal franchise category and covered by the GCC:

High Court Proceedings	Summary
Bail proceedings	Paragraph 2(2) of Schedule 3 to the Access to Justice Act 1999 provides that a grant of representation automatically covers representation for the purposes of any related bail proceedings. <u>This will include bail proceedings</u> <del>Therefore representation in the High Court prior to the 1 September 2004 when such proceedings were abolished under S 17 of the Criminal Justice Act 2003.</del> <u>Otherwise</u> bail proceedings <u>shall be</u> covered by the original grant of a representation order in the magistrates' court. The General Criminal Contract provides that costs in the bail proceedings will be assessed by the Commission <del>rather than the High Court</del> and will be treated as part of the costs of representation under the magistrates' court representation order.

<b>High Court Proceedings</b>	<b>Summary</b>
Representations against a voluntary bill of indictment	These are mainstream criminal proceedings within Section 12(2)(a) of the Act. However Regulation 9(2) of the General Regulations provides that application for the representation order is made to the Crown Court. Bills will be assessed by the High Court.
<p>Confiscation and forfeiture proceedings (RSC Order 115)</p> <p>N.B. For proceedings under the Proceeds of Crime Act 2002 see guidance in Volume 3 of the LSC Manual</p>	<p>Under Regulation 3(3) of the General Regulations these are prescribed as incidental to the criminal proceedings from which they arise. By virtue of paragraph 2(2) of Schedule 3 the substantive order granted for the criminal proceedings therefore automatically covers representation in the High Court in the confiscation and forfeiture proceedings. Costs of such work will be assessed by the High Court. <u>Such provisions shall continue to apply despite the changes introduced by the proceeds of Crime Act 2002, as it is anticipated that there will be a reasonably lengthy transitional period, with a number of cases being billed under these old provisions, since many cases started pre the 2002 Act and will take some time to conclude. Caseworkers and suppliers should ensure that cases are billed in accordance with the legislation under which they were brought rather than just assuming that it will be the new legislation that will apply. Further clarification can be found in an article in Focus on CDS issue 15, titled “Confiscation, Restraint and Receivership Proceedings before and After the Proceeds of Crime Act 2002”.</u></p>
Proceedings to quash an acquittal	Tainted acquittal proceedings under the Criminal Procedure and Investigations Act 1996 are prescribed as incidental to the criminal proceedings from which they arise and are therefore dealt with in the same way as confiscation and forfeiture proceedings described above.

High Court Proceedings	Summary
Applications to state a case (from either the magistrates' court or the Crown Court)	These are mainstream criminal proceedings within Section 12(2)(a) of the Act. An application for representation in a case stated appeal will be made to the High Court (paragraph 2(2) of Schedule 3 of the Access to Justice Act 1999).
Judicial review and habeas corpus arising out of criminal investigations or proceedings	These are not criminal proceedings – see Regulation 3(4) of the General Regulations and paragraph 3 of Schedule 2 of the Access to Justice Act 1999 (Commencement No. 7, Transitional Provisions and Savings) Order 2001. Legal Representation is available under the Community Legal Service in accordance with the Funding Code Procedures.

9. Part C, Rule 1.7 GCC provides that the High Court continues to be responsible for assessing claims for work undertaken in criminal proceedings in the High Court, unless the claim falls within the Commission's in house assessment limit for civil bills which ~~is will increase shortly to up to~~ £2,500. ~~However, applications for bail in the High Court are treated as an intrinsic part of the work under a representation order granted in the magistrates' court and therefore any work undertaken in the High Court relating to a bail application must be included and assessed by the processing centre as part of a standard or non-standard fee claim (see Part B, Rule 5.8 note 11). This work is paid at magistrates' court rates and forms part of the core costs for standard fee purposes. All other High Court Work is paid at the High Court rates set out in Part E, Section ~~ection~~ 3.6 GCC.~~

## 2. Effect Trial Management Project

Insert new section 2.5 and renumber remaining sections. This change deals with the introduction of the "Effective Trial Management Project" and issues with regard to "chargeable Administrative work" carried out in pursuance of the "Effective Trial Management framework".

### 2.5 Effective Trial Management Issues

1. The Effective Trial Management Project (ETMP) is a project that is seeking to reduce the number of ineffective court hearings by 27% by April 2006. In order to do this it has introduced the Criminal Case Management framework. The Project is being piloted in a number of court centres nationally.

2. An example of a new methodology under the Criminal Case Management framework is the introduction of the Case Progression Officer at the court and within the CPS. These officers are there to liaise directly with a nominated contact from the defence firm. The Commission will pay for work undertaken in connection with the case progression officer where such work progresses the matter and qualifies as fee earning work.
3. Consequently, certain aspects of case management shall now constitute claimable work where it results in the case being progressed, even if such work might hitherto have been considered administrative.
4. An example of such qualifying work would be the completion and submission to the court of a pre-hearing readiness form.
5. An example of work that cannot be claimed and that is still expected to be absorbed into the costs of preparing the case, is time spent speaking to the court Usher asking when the case will be called or seeking to have the case moved to the head of the list.

### 3. Bail Provisions

Insert new 3.2.7 and delete current 3.2.7-10. Changes to the High Court Bail Applications section to reflect the impact of Sections 16 and 17 of the Criminal Justice Act 2003 and changes to bail provisions.

#### High Court Bail Applications

7. S 17 of the Criminal Justice Act 2003, effective from 1 September 2004 abolished the inherent power of the High Court to entertain an application in relation to bail where the magistrates court has granted or withheld bail or has varied conditions. S 16 of the same Act has the same effect with regard to applications originally dealt with by the Crown Court.
- ~~7. Hearing code HB denotes a high court bail application. Part B, Rule 5.8 note 11 GCC confirms that both Crown Court and High Court bail applications are treated as ancillary to the main proceedings and are consequently covered by a representation order granted by the magistrates for the principal proceedings. Any work related to a bail application would be included in the core costs.~~
- ~~8. If a Crown Court judge refuses to grant bail an application may be made to a High Court judge in chambers. It is possible to apply directly to the High Court without making a Crown Court application first—the High Court may often be able to hear an application more speedily than the Crown Court. The High Court also has jurisdiction to vary the terms on which bail was granted by a magistrates’ court.~~

- ~~9. The procedure is governed by RSC Order 79, Rule 9. The applicant calls upon the prosecution to show cause why he or she should not be granted bail. The claim is supported by a witness statement setting out the grounds of the application. This must be served on the prosecution before the hearing. The application is heard by a judge sitting in chambers. The client is not produced at court. The solicitor has rights of audience to appear at the hearing, but unassigned counsel may be instructed (or assigned counsel if assigned under the magistrates' court order). If the application is refused, the applicant may not make any further application for bail, unless there are new arguments as to fact or law.~~
- ~~10. If a High Court bail application is made after the proceedings have been committed to the Crown Court for trial, then the work in relation to the bail application forms part of the Crown Court bill and will be claimed and assessed at the appropriate Crown Court rates by the taxing team.~~

#### **4. Drug Treatment and Testing Orders**

Amend paragraph 3.10 on Drug Treatment and Testing Orders (DTTO) to reflect the commencement of sections 209 through to 211 of the Criminal Justice Act 2003.

##### **3.10 Treatment and Testing Orders (DTTO)**

1. This type of sentence was introduced by the Crime and Disorder Act 1998 and is repealed and replaced by Sections 209 to 211 of the Criminal Justice Act 2003. These provisions are and is designed to address the specific problems of defendants with drug addictions. If a magistrates' court imposes a DTTO there is at least one mandatory review hearing in open court during the period of the DTTO. The defendant must attend this hearing with his or her probation officer. Further reviews may take place at the court's discretion and may sometimes only involve a probation officer presenting a progress report to the court.

## 5. Funding for Anti-social Behaviour Orders

Insert table of arrangements for funding assistance after paragraph 3.15.13.

**TABLE OF FUNDING ARRANGEMENTS FOR ANTI-SOCIAL BEHAVIOUR ORDERS**

Legislation	Section	Court and nature of Order sought	Funding available
<u>Crime and Disorder Act 1998</u>	<u>1 &amp; 1 d</u>	<u>Magistrates Court.</u> <u>Anti-social Behaviour Order, sought by relevant authority to protect public from anti-social behaviour.</u>	<u>Advocacy Assistance</u> <u>Suppliers self grant using devolved power. Maximum limit on funding of £1,500 extendable upon application to the Commission.</u> <b><u>Courts have no jurisdiction to Grant Representation Orders in such cases.</u></b>
<u>Crime and Disorder Act 1998</u>	<u>1 b (5)</u>	<u>County Court.</u> <u>Anti-social Behaviour Order, sought by relevant authority to protect public from anti-social behaviour</u>	<u>Funded by Community Legal Services, i.e Legal Help or a Civil Certificate. Out of scope for funding under the General Criminal Contract.</u>
<u>Crime and Disorder Act 1998</u>	<u>1 (c)</u>	<u>Magistrates Court or Crown Court.</u> <u>Following conviction of an offence where the Court considers that the defendant acted in an anti-social manner and an order is necessary to protect the public from further anti-social acts.</u>	<u>Representation Order. Such proceedings are treated as incidental to the main proceedings, therefore funded under the Representation Order granted in respect of the substantive criminal charges.</u>
<u>Crime and Disorder Act 1998</u>	<u>2 &amp; 2A</u>	<u>Magistrates Court.</u> <u>Sex Offender Order, sought by relevant authority where person has acted in such a way as to give cause to believe that an order is necessary to protect the public from serious harm.</u>	<u>Advocacy Assistance, as above.</u> <b><u>Courts have no jurisdiction to Grant Representation Orders in such cases.</u></b>
<u>Crime and Disorder Act 1998</u>	<u>4</u>	<u>Appeal against an Anti-social Behaviour order by the defendant to the Crown Court.</u>	<u>Advocacy Assistance.</u> <u>In very exceptional circumstances, the Commission can grant Representation Orders.</u> <b><u>Courts have no jurisdiction to Grant Representation Orders in such cases.</u></b>
<u>Anti-social Behaviour Act 2003</u>	<u>2, 4 &amp; 5</u>	<u>Magistrates Court.</u> <u>Closure Orders, sought by relevant authority to prevent the unlawful use of the premises for, production or supply of a Class A controlled drug and such use is associated with the occurrence of disorder or serious nuisance and the making of such an order is necessary to protect the public from the same.</u>	<u>From 17<sup>th</sup> May 2004, Advocacy Assistance. Prior to that date cases could only be funded using the exceptionally funding routes, see below for more details.</u> <b><u>Courts have no jurisdiction to Grant Representation Orders in such cases.</u></b>
<u>Anti-social Behaviour Act 2003</u>	<u>20 &amp; 26</u>	<u>Magistrates Court.</u> <u>20. In cases of truancy or exclusion from school where the court believes that the making of such an order will improve the attendance of the pupil at school or their behaviour.</u> <u>26. Parenting contract in respect of criminal conduct and anti-social behaviour, where the court is of the view that such a contract could lead to the prevention of the child from entering into criminal conduct and anti-social behaviour.</u>	<u>Exceptional funding only.</u> <u>Neither of these sections are within the scope of either the General Criminal or Civil Contract.</u>
<u>Crime and Disorder Act 1998</u>	<u>1 &amp; 1D;</u> <u>1 B (5);1 C;</u> <u>2 &amp; 2A</u> <u>4</u>	<u>Magistrates and Crown Court.</u> <u>Breach proceedings.</u> <u>Breach proceedings.</u> <u>Breach proceedings.</u> <u>Breach proceedings.</u>	<u>Representation Order.</u> <u>Representation Order.</u> <u>Representation Order.</u> <u>Representation Order.</u>
<u>Anti-social Behaviour Act 2003</u>	<u>2, 4, 5;</u> <u>20, 26;</u>	<u>Breach proceedings.</u> <u>Breach proceedings.</u>	<u>Representation Order.</u> <u>Representation Order if the interests of Justice Criteria are met, unlikely as non- imprisonable offence.</u>

## 6. Electronic Presentation of Evidence

Amend paragraph 4.10.3 to update the definition of a Very High Cost Case.

Add new paragraph 4.10.5 to record standardisation of fees nationally for this work as the result of one provider being awarded the contract for all Crown Court Estates.

3. Very high cost crime cases are handled under a different regime through individual case contracts. The Complex Crime Unit must be notified of any case that meets the criteria i.e. cases which are likely to run for 41 days or longer ~~a minimum of 25 days at trial or where the total defence costs are likely to exceed £150,000~~. Where the use of EPE is sought in a case managed by this Unit under an individual contract, the solicitors must include the expenses in a costed stage plan. The case contract manager will then discuss the proposals with the defence team. In respect of what is an allowable item (i.e. a disbursement) and what is not (i.e. an overhead), the contract manager will follow the same guidance as those dealing with requests for prior authority. Further, whilst dealing with each request on its own merits, the same test of reasonableness will apply and the contract manager will be seeking to establish that the use of EPE will bring about an overall saving in costs.
4. It is important that any application for prior authority or permission from the Complex Crime Unit for the use of CAT or EPE technology is made at the earliest possible opportunity by the defence to ensure that there is no delay to the trial process.
5. The Contract for real time transcription services has now been awarded to Wordwave for the entire Crown Court Estate. Accordingly the prices for Live Note have dropped dramatically and standard pricing regimes have been introduced for both inner and outer London. Wordwaves' rates can be found on their website [www.wordwave.co.uk](http://www.wordwave.co.uk).

## 7. Retention of Bodies

Insert new section 4.16 and renumber remaining sections. Guidance added with regard to the charging for retention of bodies and reconstruction work as a result of a change in practice by mortuaries.

### 4.16 Charging for the retention of bodies

1. It is becoming increasingly common for mortuaries to charge firms for the cost of retaining bodies after the Home Office post mortem examination has been performed and before the defence post mortem is carried out. Such storage requires bodies to be held in specific "ideal" conditions to prevent further decomposition prior to that examination, thus enabling the defence the best opportunity available to examine the evidence. Additionally, the defence post mortem, which is funded by the Commission, usually by way of prior authority, is limited to that examination only. It has not previously included reconstruction and cosmetic repair of the body before it is released to the family for burial. Such work is skilled taking up valuable time of the mortuary technicians. As the need for this extra work is occasioned by the examination by the defence appointed pathologist, mortuaries have concluded that it is proper to

charge to the defence, for the cost of carrying out the work and the storage costs incurred.

2. In light of this change in the practice by the mortuaries, the Commission shall pay the cost of charges incurred as outlined in the above circumstances. It will not authorise payment for the costs of any storage that have not been incurred directly by the defence.
3. Claims for these costs should be made by way of a disbursement on the bill and will need to be supported by a copy of the invoice from the mortuary which should clearly show reasons for retention, the daily rate charged for retention and details of any reconstruction work carried out.
4. Files should also clearly demonstrate that best efforts were employed to have the defence post mortem carried out at the earliest opportunity in accordance with the Home Office Circular No. 30/19-99 Post Mortem Examination and the Early Release of Bodies.

## **8. The Appeals Procedure**

Amend section 11 to clarify and reflect changes to the General Criminal Contract effective from the 31 October 2004.

Amend Section heading and insert the following prior to 11.1 Introduction.

## **11. The Appeals Procedure on Costs Assessments**

There are two distinct appeals procedures under the General Criminal Contract with regard to appealing assessments of costs on criminal cases.

The first procedure detailed relates to appeals made in respect of disputed costs assessments on CDS 7, non standard fee claims and in respect of refusals to grant prior authority for expenses.

The second system introduces the procedure to be followed when firms appeal against assessments made on a Criminal Contract Compliance Audit.

Insert additional heading and paragraphs after 11.4.13 as follows:

### **11.5 Assessment and Costs Appeals**

1. The application of findings generally on assessment, pursuant to Rule 1.10.
2. This rule enables the Commission, on assessing a sample of claims to apply any findings that we make to other claims for payment for Contract work.

3. When findings are applied in this way, it can be done for all cases commenced under the current Contract (or any other Contract that it has replaced) where costs have been claimed from the Commission and either:
  - (a) In the case of mis-claiming, since the date permitted by Clause 12.b.9 of the Contract Standard Terms;
  - (b) in the case of over claiming or other claiming issues;
    - (i) since the date the file sample was requested for the last contract compliance audit, or
    - (ii) from a date 12 months immediately preceding the date the file sample was requested for Assessment on the current audit,

whichever is more recent.
4. “Mis-claiming” is defined as claiming in a manner that is clearly contrary to a specific rule in the Contract and where no discretion arises as to payment. For instance, claiming the incorrect rates, failing to claim post charge Advice and Assistance provided on the same Case as part of the standard fee or claiming for Advocacy Assistance outside the scope of the Contract.
5. “Over claiming” is defined as claiming more than the commission determine to be reasonable on Assessment under Part C, Rule 1.13, but where discretion arises as to the amount allowable. An example could be taking longer to perform an item of work that on assessment is considered reasonable in light of the evidence provided and the nature of the case and the client. Another might be the unreasonable incurring of a disbursement.
6. “Findings” includes not only findings as to particular practices (e.g. a systemic failure to assess financial eligibility) but also findings as to more general matters, e.g. claiming excessive time for preparation or attendances or the average percentage reduction on Assessment of a sample of files.
7. If the sample relates only to a specific group of files or Unit or Class of Work, then the finding will be limited to that specific group.
8. When findings are applied to a claim under this Rule, then that Claim has been Assessed by the Commission.

## **11.6 Appeals**

1. If a solicitor disagrees with an assessment undertaken by a regional office, then he or she may appeal to the Costs Committee to review the determination (Part C, Rule 1.11 GCC).

2. The appeal can be in relation to the individual Assessments, or, on the basis that the firm disagree with the application of Rule 1.10 or both. Where, having considered the files before them the Costs Committee revises the average percentage reduction on the sample of files assessed by the regional office, then, unless the Committee directs otherwise it is the revised average that will be applied to the unassessed files under the terms of Rule 1.10. Additionally the Committee can also make it's own findings under Rule 1.10 and may substitute such findings for those of the Regional Director.
3. The time limit for filing an appeal is 28 days from the date of receipt of the notification of the decision. Firms, will be deemed to have been notified, of the decision only when they are also in receipt of the returned audited files.
4. The appeal must be made in writing (setting out full reasons) and must be accompanied by the relevant file /s. Where a file is not sent within that period, the Assessment on the file will stand and accordingly the Commission will consider that the firm have waived their right of appeal.
5. The Regional Director will extend the 28-day time limit by a maximum of a further 14 days where the firm have requested an extension, for good reason, within the first 21 days of that 28 day period. Good Reason could include a scenario where a sole practitioner is on holiday during the period, has been affected by a death of an immediate family member or where it is necessary to contact a third party, e.g. former fee earner to obtain additional evidence or information. No extension of time will be granted unless the request was received within the 21 day period and any extension shall, in any event. be for no longer than an additional 14 days.
6. Where there is a failure to comply with any of the above, it is considered by the Commission that this is acceptance of the Regional Directors decision and the right to dispute it shall be lost.
7. Where an appeal is to proceed the Regional Director will endeavour to list the case before a Costs Committee within a reasonable period and;
  - (a) The Regional Director may make a written reply to any full reasons that are provided up to 21 days before the listed date.
  - (b) The appellant may then respond to any such written reply up to 7 days before the listed date.
8. Where, additional representations are made by the firm, over and above any permitted above, they may be included in the appeal but only with leave of the Committee, who in order to grant such leave will require good reasons to be provided to them as to why the relevant matters have not been raised before this point in time.
9. The aim of the process, requiring written representations, (appeal, reply and response) is to define and identify all of the matters that remain in dispute between the Commission and the firm so that the Committee are clear about what matters they are required to consider.

10. In addition, however, the Committee retains an inherent right to raise additional or new issues in exercise of its discretion to increase, confirm or reduce the Assessment.
11. Either party may attend at the appeal provided that notice is given to the other party and the Costs Committee. In order to attend at the appeal the appellant must provide notification of their intention to attend when they submit their written appeal. The commission will notify of any intention to attend when they send out their agenda. The Commission do not intend to attend in every case and only where the appellant has indicated that they are attending the hearing. Neither party will remain or be allowed to remain in the presence of the Committee during any “in camera” deliberations.
12. For the purposes of the above such a rule does not relate to the presence of the Committee clerk who is supplied by the Commission to carry out administrative functions under the Review Panel Arrangements 2000.

### **11.7 Costs Appeals Committee**

1. If the firm remain dissatisfied with the decision of the Costs Committee on an appeal they may within 21 days of receipt of notification of the decision, apply in writing to a Costs Committee to certify a Point of Principle of General Importance. Such an application must set out the wording of the Point (or Points) of Principle of General Importance that they wish the Costs Committee to certify. The Costs Committee will determine any such application to certify a point of Principle of General Importance on the papers only.
2. Where the Committee makes a certification as to the Point of Principle the Supplier may then, within 21 days of the receipt of the notification, apply in writing to the Costs Appeals Committee for it to determine that Point of Principle.
3. If the firm do not comply with this time limit (or any extended time limit that the Commission agree to) it will be deemed that the Costs Committees’ rule has been extended and that the right to dispute it is lost under Rule 1.11.
4. Time limits will only be extended where the application is made prior to the expiry of the initial time limit and where there are exceptional circumstances.
5. Where a Regional Director is dissatisfied with a decision of a Costs Committee brought on an appeal by the firm, he or she can, within 21 days of the decision certify a Point of Principle of General Importance and apply in writing to the Cost Appeals Committee for them to determine that Point of Principle. Notice of the same will be served on the supplier, who may, within 21 days of the receipt of the Notice make written representations to the Costs Appeals Committee.
6. On considering the application the Committee will either:

- (a) determine any Point of Principle of General Importance certified by the Costs Committee or Regional Director and, where appropriate, amend any of the Assessments of the Costs Committee to give effect to this determination or refer the matter back to the Costs Committee for it to do so; or
  - (b) determine that there is no Point of Principle of General Importance raised by the application before it and refuse the application accordingly.
7. The Costs Appeals Committee will usually determine the application on the papers before it but may exceptionally at its discretion grant a request by an appellant to attend and or be represented on the appeal, provided that the same right is granted to the other party to the appeal.

### **11.8 Basis of Assessments and Appeals**

1. Any Assessment made by the Regional Director under Rule 1.1 of this part, and any appeal to the Costs Committee under Rule 1.11 and any application considered by the Costs Appeals Committee under Rule 1.12 shall take place on the basis of determining on the Standard basis, whether work was actually and reasonably done and disbursements actually and reasonably incurred and whether time spent is reasonable in accordance with the requirements of the Contract and the Guidance and applying the remuneration rates set out in Part E of the General Criminal Contract.
2. Payment will only be made where the above criteria are met and where the claims are supported by appropriate evidence on the file at the time the claim was submitted to the Commission. There is no entitlement to claim for unrecorded time.
3. Disbursements will be assessed on the basis of determining whether they were reasonably incurred and are reasonable in amount subject to any prior authority that was granted.