

legal aid – fair access to justice



## **2010 VHCC Guidance**

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## 2010 VHCC Guidance

### 1. Introduction

- 1.1 The Very High Cost (Crime) Case (VHCC) scheme is a remuneration scheme for Litigators and Advocates for cases in the Crown Court that meet certain criteria. All other Crown Court cases are remunerated under the Litigator Graduated Fee Scheme (LGFS) and the Advocate Graduated Fee Scheme (AGFS).
- 1.2 On 14 July 2010 the LSC implemented the 2010 VHCC scheme and accompanying VHCC Accreditation process. The following documents govern that VHCC scheme:
- VHCC Arrangements 2010 (“the Arrangements”);
  - Individual Case contract (2010)
  - 2010 VHCC Contracts for Signature for organisations and self employed advocates;
  - Standard Terms 2010;
  - 2010 VHCC Specification (for organisations); and
  - 2010 VHCC Specification (for self employed advocates).
- 1.2.1 On 3 October 2011, the LSC issued an amended version of the VHCC 2010 Arrangements, which governs the criteria according to which cases are classified, and subsequently funded, as VHCCs, where the representation order is granted on or after 3<sup>rd</sup> October 2011. The relevant documents for this scheme, in addition to those listed above, are
- VHCC Arrangements 2010 (amended)<sup>1</sup>
  - 2011 ICC Contract Specification (for organisations); and
  - 2011 Individual Criminal Case (ICC) Contract (for organisations) Contract for Signature
- 1.3 This VHCC Guidance relates to the 2010 VHCC scheme and provides guidance for specific sections of the documents listed above with the exception of the Standard Terms 2010. Separate guidance on the Standard Terms 2010 is available on the LSC Website.
- 1.3.1 Clause 2 of this guidance relates to those changes effected by the amendments in Version 3 of the Arrangements.
- 1.4 The 2010 VHCC Guidance is a live document and will continue to be updated as and when necessary to reflect any procedural and regulatory changes to the 2010 VHCC scheme.

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<sup>1</sup> Very High Cost (Crime) Cases Arrangements 2010 – Version 3 – 3 October 2011

## 2. VHCC Arrangements 2010

- 2.1 The VHCC Arrangements 2010 (Arrangements) outline the process to be followed before the LSC issue a contract to the provider.
- 2.1.1 Part A of the Arrangements applies to all cases where the representation order is granted on or after 14 July 2010 and sets out the obligations for notification, and criteria for VHCC classification, for those cases.
- 2.1.2 Part B of the Arrangements deals with the eligibility criteria, contracting process and pre contract payment for all cases conducted as VHCCs in accordance with 2010 VHCC contracts. These include
- a) Those cases where the representation order is granted on or after 14 July 2010 and before 3 October 2011, and the criteria set out at clause 5 of the Arrangements are fulfilled; and
  - b) Those cases where the representation order is granted on or after 3 October 2011 and in the opinion of the LSC the trial is likely to last more than 60 days.

All such cases will be managed by the Complex Crime Unit and funded in accordance with the terms of the 2010 VHCC Contract.

- 2.1.3 Part C of the Arrangements applies to all cases where the representation order is granted on or after the 3 October 2011 and in the opinion of the LSC the trial is likely to last more than 40 but less than 61 days. Those cases will be funded in accordance with a 2011 ICC which will entitle both litigators and advocates to claim payment in accordance with the applicable Graduated Fee Scheme (GFS).

### Notification

- 2.2 Under Regulation 23 of the CDS General Regulations (No.2) 2001, practitioners remain subject to a statutory obligation to notify the LSC of potential VHCCs. Practitioners must therefore notify the LSC of any case where the trial is likely to last in excess of 25 days.
- 2.3 A practitioner's failure to notify or delay in notifying such a case to the LSC may contravene the Regulations. Those practitioners with a 2010 Standard Crime Contract may also be in breach of contract.
- 2.4 It is not anticipated that a single incident of failure to notify will be recorded necessarily as a fundamental breach and merit the imposition of a sanction. However, sanctions are likely to be considered when there is a persistent failure to notify, or if circumstances of a single failure to notify have a financial impact on the fund.

### Classification

- 2.5 Paragraph 5.1 of the Arrangements makes reference to the distinction between those cases conducted under a 2010 VHCC contract and those conducted under a 2011 ICC contract.
- 2.6 As per paragraph 2.1.3 above, a 2011 ICC will entitle litigators and advocates to claim payment for work undertaken in accordance with the appropriate graduated fee scheme.

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- 2.7 For cases where the representation order is granted on or after 3 October 2011, and the trial is likely to last more than 40 but less than 61 days, the LSC will issue a 2011 ICC.
- 2.8 For cases where the representation is granted on or after 3 October 2011, and the trial is likely to last for over 60 days, the LSC will issue a 2010 VHCC Contract for both litigators and self-employed advocates.
- 2.9 Paragraph 5.2 of the Arrangements refers to “any other relevant information it may hold at that time.” By this we mean any information from organisations, prosecution agencies and the court, as well as the nature of the case including the type of charges, the number of defendants and volume of material.
- 2.10 Paragraph 5.4 (b) of the Arrangements outlines the circumstances in which the LSC may classify as VHCCs cases of 25 to 40 days where it considers exceptional circumstances apply. The LSC may, exceptionally, classify those cases where it considers the application of VHCC contractual arrangements to be in the interests of justice and of the public purse.
- 2.11 In multi handed cases, where different defendants have representation orders dated either before and after 14 July 2010, or before and after 3 October 2011, in assessing which VHCC scheme to apply the LSC will take into account the dates of all representation orders and all the circumstances of the case. In a multi-handed case, the CCU is likely to classify the matter according to the earliest representation order at the time of classification, with all other defendants in the same case being funded under the same scheme.
- 2.12 Exceptionally, even though a case may on the face of it fulfil the VHCC definition, the LSC may decide not to classify it as such taking into account the optimum balance of the interests of justice and those of the public purse.

## Declassification

- 2.13 Declassification will take place only exceptionally. If a defence team brings to the CCU's attention a material change in those factors which led to the case's classification as a VHCC, the CCU may consider declassifying that case. The CCU would expect that the change at issue would be verifiable from an objective point of view. It would not be expected that a change in a defence team's opinion of the case could trigger such a review.
- 2.14 In considering whether or not to declassify a case, the CCU may take into account the following factors:
- The nature and significance of the changed circumstances;
  - Whether it might be possible that the relevant criteria could fluctuate further. It would not be expected that a case, once declassified, could be reclassified, and it would be considered against the interests of all parties for a case's funding status to remain uncertain on an ongoing basis;
  - The stage in the proceedings reached. The earlier the issue were considered, the less likely it would be that any decision to declassify could cause disruption

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or prejudice the organisations and/or Advocates involved. It would be unlikely that the CCU would wish to declassify a case if proceedings were significantly advanced;

- The amount of work done and payment claimed by organisations and/or Advocates involved. Subsequent to declassification, all payments made under the VHCC scheme would be recouped, and payment would be made, instead, through the appropriate graduated fee scheme. The CCU would be mindful of the potential prejudicial consequences of declassification, in some circumstances, to organisations and/or Advocates who had already completed significant amounts of work.
- In multi handed matters, the balance of the parties' views and interests taking into account the involvement of all organisations and Advocates in the case as a whole. It would not be expected that a case would be declassified for one defendant unless it were suitable to declassify for all defendants.
- Whether the CCU had been led to rely on any misleading information in deciding to classify the matter as a VHCC
- The consequence of any funding decision upon the public purse

### Part B VHCC Eligibility Criteria (VHCC 2010 Contracts)

- 2.15 This section applies to the requisite Eligibility Criteria for all those cases conducted in accordance with VHCC 2010 Contracts.
- 2.16 Those organisations able to demonstrate that they satisfy the Eligibility Criteria at Annex A of the Arrangements will obtain VHCC Accreditation, subject to having someone in place who meets the Supervisor criteria before the Stage 1 Start Date.
- 2.17 Organisations that were previously VHCC Panel Members do not have to resubmit the information they provided in 2007/08 provided there have been no fundamental changes to their structure.
- 2.18 Self-employed advocates due to be instructed on cases conducted in accordance with 2010 VHCC Contracts (ie cases with trial estimates over 60 days) will also need to apply for accreditation but will be invited by the LSC to do so when appropriate. When invited, provided the self-employed advocate satisfies the Eligibility Criteria at Annex B of the Arrangements, they will obtain VHCC Accreditation.
- 2.19 For further information on the VHCC Accreditation Process, please see the Information for Applicants (IFA) on the VHCC Accreditation page of the LSC Website.
- 2.20 Where the LSC makes an assessment that either an organisation or a self employed advocate fails to meet the requisite Eligibility Criteria, and there are no exceptional circumstances, the LSC will request that the organisation in question facilitates transfer of the representation order, or that the advocate in question hands back the brief to enable instruction of another advocate. Should either organisation or advocate continue to work under such circumstances, they will not be in a position to claim payment through public funds.
- 2.21 Where, under the circumstances described in 2.20 the LSC requests that the organisation facilitate transfer of the representation order, or there is a transfer of representation in any other circumstances, the transferring organisation may claim for

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work done by submitting a bill to the CCU which will be assessed on an ex post facto basis.

Where, in the circumstances described in 2.20 above, the LSC requests that a self-employed advocate facilitates transfer of representation, or there is a transfer of representation in any other circumstances, the transferring advocate may claim for work done by submitting a bill to the CCU which will be assessed on an ex post facto basis.

- 2.22 Paragraphs 7.1 – 7.4 of the Arrangements set out that, in exceptional circumstances, the LSC has discretion to authorise an organisation and/or advocate to undertake VHCC Work even though they do not satisfy the Eligibility Criteria. If the LSC considers that the threshold for exceptionality is met, it may offer an exceptional case contract, and the funding for the case will be administered in accordance with the same 2010 VHCC contractual terms.
- 2.23 The award of an exceptional case contract would not equate to the organisation obtaining Accreditation. In order to work on other cases classified as VHCCs, the organisation would need to apply for VHCC Accreditation and demonstrate their eligibility.
- 2.24 In awarding such contracts, the LSC would have to be satisfied that the organisation were in a position to provide requisite skill and experience in conducting the case. Factors that could be taken into account by the LSC when considering exceptional circumstances include, but are not limited to:
- the level of disruption that could be caused on transfer of representation from the organisation in hand, where that organisation has had extensive involvement with the defendant in these proceedings, or previous proceedings which are significantly linked;
  - an organisation's unique or exceptional ability to conduct a particular defendant's case, for example because of an unusual skill or knowledge necessary to deal with a particular defendant and/or a particular case;
  - the proximity of trial where a case is seen to fulfil the VHCC definition so late in proceedings that it could be detrimental both to the progress of the case and to the public purse to insist on a transfer of representation
- 2.25 This is not an exhaustive list and each case will be treated according to its particular circumstances, taking into account the optimum balance between the interests of justice and those of the public purse.

### Part B Contracting – VHCC 2010 contracts

- 2.26 Clause 8 of the Arrangements deals with contracting for those cases for which the LSC issues 2010 VHCC contracts. Where the representation order is granted on or after 3 October 2011, these will include only cases where the LSC considers the trial is likely to last over 60 days. This will apply to both litigators and advocates.
- 2.27 VHCC Contract Managers may agree an extension for the submission of the documents listed in Paragraph 6.2 of the Arrangements but they are not able to authorise an extension for the submission of the signed contract, in accordance with

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Paragraph 6.1 of the Arrangements. The CCU will not apply any discretion when exercising its powers under Paragraph 6.6.

- 2.28 The terms of the 2010 VHCC Contract will only apply when the Contract is signed by both parties. However, once the decision letter is issued the LSC has classified the case a VHCC and the organisation (and/or where applicable self-employed advocates) may not claim payment for work done after that date through any other scheme.

### Part C Eligibility Criteria

- 2.29 Clause 10 of the Arrangements refers to the requisite Eligibility Criteria for those cases conducted in accordance with 2011 ICCs, namely those cases where the date of the representation order is granted on or after 3 October 2011, and in the opinion of the LSC the trial is likely to last more than 40 but less than 61 days.
- 2.30 Part C Eligibility Criteria are contained within Annex C of the Arrangements.
- 2.31 10.2 – 10.4 sets out that, in exceptional circumstances, firms who do not meet the Part C Eligibility Criteria may carry out work conducted in accordance with 2011 ICCs. In awarding such contracts, the LSC may take into account those factors listed at paragraph 2.26 above.
- 2.32 The Part C Eligibility Criteria for organisations are equivalent to the requirements for the grant of an LSC Standard Criminal Contract.
- 2.33 For cases conducted in accordance with 2011 ICCs, there are no eligibility criteria for advocates.

### Part C Contracting

- 2.34 Clause 11 refers to the contracting process followed where a case is classified as a VHCC in accordance with these arrangements and a 2011 ICC issued.
- 2.35 In such circumstances the LSC will issue a contract to the organisation instructed. There will be no separate contract for the advocate(s).
- 2.36 The ICC will be issued, and a copy retained, by the CCU. However, payment will be made in accordance with the appropriate graduated fee scheme and there will be no ongoing contract management by a CCU contract manager, as there is for cases conducted in accordance with 2010 VHCC Contracts.
- 2.37 At the conclusion of the case, in order to claim payment, organisations and advocates should submit the appropriate claim form to the relevant team within the LSC dealing the applicable graduated fee claim.

### 3. Contract for Signature

- 3.1 The Standard Terms 2010 apply to all LSC contracts including those for VHCCs. However, the LSC recognises that not all of the terms apply to individual VHCCs and/or self-employed advocates. Therefore, the Contract for Signature (CfS) amends or disappplies some clauses in the Standard Terms.
- 3.2 At the point of sending out a decision letter classifying a matter as a VHCC, the CCU will also send out a Contract for Signature. The CCU will fill in the Contract Start Date; Provider Name and address; the type of VHCC (for organisations); the name and contact details of the VHCC Contract Manager.
- 3.3 The Provider is expected to return the Contract for Signature signed, and with their appropriate contact details in the Annex.
- 3.4 On receipt of the signed Contract for Signature, the CCU will sign the document, and insert the relevant date upon which the Contract is made and the contract number. It is on this date that the Contract is formed.
- 3.5 The Contract Start Date is the date of the Representation Order for the defendant in question, and the CCU has power to authorise payment through public funds from this date onwards. The Contract Start Date will therefore be earlier than the date upon which the contract is made.
- 3.6 The Contract for Signature (for organisations) may be signed by anyone within an organisation authorised to sign such documents. It need not be restricted to the VHCC Supervisor.
- 3.7 Those authorised to sign for and on behalf of the LSC will include those at Contract Manager level and above. It need not be restricted to the Contract Manager in the case.

#### 4. 2010 VHCC Contract Specification

- 4.1 This section applies only to cases conducted in accordance with a 2010 VHCC Contract. For cases where the representation order is granted on or after 3 October 2011, for both organisations and advocates, this will be limited to those cases where in the opinion of the LSC the trial is likely to last over 60 days. It applies equally to organisations and self employed advocates. Where there are distinctions, the guidance will specify.

##### Service standards

- 4.2 Paragraph 3.4 in the Specification (for organisations) sets out the requirement for the organisation to employ at least one VHCC Supervisor. Unless exceptional circumstances apply, the VHCC Supervisor must be in post at the Stage 1 Start Date and throughout the life of the case. Please note there is no specified ratio of VHCC Supervisors to fee earners.
- 4.3 Those who are deemed as being “employed” within an organisation include partners, lawyer members of a limited liability partnership and sole principals. Where an employed litigator is an assistant or associate, “employed” is taken to mean that individual has a contract of employment which ensures they work with the firm at least two days a week. An employed litigator may be a locum.
- 4.4 If the VHCC Supervisor is absent for a brief period, such as a short holiday, it is unlikely that it would be considered necessary to appoint a Temporary Supervisor. Contract Managers are expected to use their discretion to decide when such an appointment becomes necessary.

##### Carrying out Contract Work

- 4.5 All documentation submitted by defence teams must be clear to read. Case Plans and Task Lists should be typed and emailed. Where documents must be submitted in a specific typed or electronic format, as stipulated by the contract, the VHCC Contract Manager will send the relevant forms to the organisation or advocate concerned. These must be completed fully with the requisite declarations affirmed.
- 4.6 Where a defence team send a request to a Contract Manager, the Contract Manager may in some cases respond with a request for specific further information that is required before a decision can be made. The Contract Manager may also give an indication that s/he will require further time to consider the matter if its complexity means that a considered response or request for further information could not be made on the current information.
- 4.7 Where the Contract Manager is absent from the office, a response to requests for authorisation may be in the form of an automated response, which will state that the e mail has not been read and provide alternative points of contact.
- 4.8 Paragraph 4.7 above clearly sets out that the absence of a specific reply or acknowledgement from a Contract Manager, in response to a request for authorisation, may not be construed as agreement. Work carried out without such a reply or acknowledgement will be treated as unauthorised work, unless the work falls within the exceptions specified in paragraph 5.20 of the Specification for Organisations”.

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- 4.9 Paragraph 5.19(c) of the Specification (for self-employed advocates) and Paragraph 5.20(c) of the Specification (for organisations) envisage a situation where a tranche of material is served at the outset of a stage and a small number of extra pages of the same material (eg further pages of used statements) are served at a later point during the same stage. In such circumstances the Contract Manager may give an indication to the defence team at the outset of negotiations that, should such a situation arise, the team may take it that they have implied authority to read the extra material at the rates already agreed for that type of material. This exception is not intended to apply to circumstances where significant volumes of extra material are served, triggering large quantities of time and cost. In these circumstances time must always be negotiated afresh.
- 4.10 Requests for over 500 hours per individual task and/or over 1000 hours for a stage for either the organisation or self-employed advocate will be referred to and discussed with the Contract Manager's line manager, prior to agreement. Requests for over 1,500 hours will be referred to the CCU Senior Management Team.
- 4.11 On VHCCs with trial estimates over 60 days, it may in certain circumstances be reasonable to remunerate the self-employed advocate for attendance at a Stage meeting if they have a specific contribution to make that will enhance the process and that such a contribution could not be made by the VHCC Supervisor alone. Such remuneration should be considered an exception and not the rule and should be applied on a meeting by meeting basis.

### Category of case

- 4.12 The following guidance applies to Paragraphs 4.16 to 4.21 of both Specifications (and additionally 4.22 of the Specification (for organisations)).
- 4.13 **General** – in the case of each criterion, the defence team must show that the necessary factors are applicable to the case which their particular defendant has to meet and/or features of the defence that he or she will be putting forward. . In a multi-handed case, it would be insufficient to argue that any criterion applied to the case against a co-defendant, and therefore to the case in general.
- 4.14 Where the issue of category has been settled, either through negotiation with the Contract Manager or following an Appeal, category will only be reviewed where there has been a material change in the case against the provider's defendant.
- 4.15 Subject to paragraph 4.13 above, the defence team may request a review of category at any time. The Contract Manager may review category at the start of every stage.

### Fraud cases – Block A

*The defendant's case is likely to give rise to national publicity and widespread public concern.*

- 4.16 In order to satisfy this criterion, it is necessary for a case to satisfy both limbs of this test: a) national publicity; and b) widespread public concern.
- (a) For a case to satisfy 'national publicity' the LSC would expect to see evidence that the case had triggered nationwide publicity. It would be likely that broadcast, print and electronic media would all show interest in such a case.

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Coverage by a single publication or broadcast programme, or by local media alone, would be insufficient.

Although standard reporting restrictions might render coverage sporadic in some cases, the LSC would expect to see evidence that there was sustained interest in the case at all stages of its life. It is recognised that a case of potentially high interest may receive little or no publicity because of blanket reporting restrictions. In cases like these, the LSC would take into account the type of publicity likely to be generated were those restrictions lifted, and the reasons for imposing them in the first instance.

- (b) For a case to satisfy 'widespread public concern' it would be necessary to show that the publicity was triggered by issues of far reaching and significant concern, such as that which might trigger editorial debate. It would be insufficient to show that such concern was held only by a specific interest group or groups.

The LSC would expect to see evidence that these issues were directly related to the case and intrinsic to its substance, rather than peripheral to it or incidental.

### *The defendant's case requires highly specialised knowledge*

- 4.17 To satisfy this criterion, the LSC would expect that, as a prerequisite, practitioners must demonstrate a certain level of skill and expertise in dealing with large fraud cases, cases involving serious financial impropriety and complex financial transactions.
- 4.18 They would be expected to be familiar, or equipped to deal, with most matters frequently prosecuted by the Serious Fraud Office, Revenue and Customs Prosecution Office, Crown Prosecution Service, or any prosecution agency into which any of the above have been incorporated, or are likely to be incorporated.
- 4.19 The defence team would need to show that a case meeting this criterion involved an area of skill and expertise outside the usual scope of a criminal fraud practitioner's expertise, taking into account the expectations of skill and experience raised in paragraphs 4.17 and 4.18 above.
- 4.20 The defence team would need to show both that the defendant's case required this skill and expertise, and that they were able to provide it in house. It would be expected that any putative highly specialised knowledge would go to the legal heart of the defendant's case, and would be of a significant level of complexity. Where experts are instructed to address highly specialised issues, the LSC would expect to see evidence that the outside expertise complements expertise within the firm, rather than obviating the need for it.

### *The defendant's case involves a significant international dimension*

- 4.21 To satisfy this criterion, the defence team would need to show that a particular aspect of their case preparation involved a non UK element of either fact or law, or both. For the international dimension to be deemed "significant", the defence team would have to demonstrate it had a direct effect on their understanding of the case, and substantially affected case preparation.

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- 4.22 With regard to a legal dimension, the need to understand the workings of non-UK jurisdictions, substantial liaison with lawyers abroad or foreign authorities, or the need to understand and assess parallel or linked proceedings in foreign jurisdictions, would be persuasive factors.
- 4.23 For a factual dimension, the defence team would need to show that key elements of the offence were perpetrated abroad, and that in analysing these the defence team would require understanding of the workings of systems or institutions different from those in the UK.
- 4.24 Incidental details would be insufficient to meet this criterion, such as:
- The defendant is a foreign national
  - There are foreign witnesses
  - Goods or money have been received from, or deposited, outside the UK
  - Commissions Rogatoires

*The defendant's case requires legal, accountancy and investigative skills to be brought together*

- 4.25 To satisfy this criterion, the defence team must show that the preparation of the defendant's case is multi-disciplinary, and that all three skills are required and interrelated, and can be provided in house. Where outside experts, such as forensic accountants, are instructed, the LSC would expect to see evidence that the outside expertise complemented expertise within the firm, rather than obviating the need for it.

### Non fraud cases – Block A

*The defendant's case is likely to attract national interest*

- 4.26 To satisfy this criterion the defence team will need to show not simply that the defendant's case triggers publicity, but that central to the substance of the case is a topic or issue of national social concern. The extent of media coverage would not be the sole test in establishing whether a case were to meet this criterion, though high levels of publicity, especially broadsheet coverage and editorial comment, would be considered a persuasive factor.
- 4.27 Where blanket reporting restrictions were in place, the LSC would take into account the type of publicity likely to be generated were those restrictions lifted, and the reason for imposing them in the first place. Reference to the case, or to issues clearly triggered by the case, in high level public discussion forums (such as parliamentary debate) would be considered as evidence that this criterion were met.

*Where the offence is of a violent or sexual nature, there must be multiple victims. If the offence is of a violent or sexual nature and there is only a sole victim, there must be something significant about the crime*

- 4.28 In order to satisfy the "something significant about the crime" part of this criterion, it would be necessary to show either:
- (a) that central to the case were issues which raised novel and complex matters of law and/or procedure; and/or

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- (b) central to the case were matters of unusual and complex fact.

### Additional guidance

#### *Consideration of evidence*

- 4.29 The CCU will make an assessment of reasonableness according to the benefit of a particular task to the defence case; the time and cost of that task as well as the overall costs of the case, and the reasonableness of the burden upon the taxpayer.
- 4.30 Where the prosecution serve tranches of evidence at the outset of the case, it will be expected that the Contract Manager will apply the following rates for reading and consideration according to the nature of the evidence:

Witness statements	2 minutes per page
Exhibits	30 seconds per page
Interview transcripts, full comment	2 minutes per page
Interview transcripts, no comment	1 minute per page

- 4.31 Where large volumes of material are served throughout the life of the case, the Contract Manager may wish to allocate lesser allowances, if one or more of the following factors apply:
- There is a relatively small proportion of evidence relevant, or likely to be relevant, to a particular defendant's case
  - Evidence served later in the case does not significantly add to or change issues raised by evidence served earlier
  - There is repetition of evidence
  - The nature and complexity or otherwise of the material, or significant portions of the material, is such that the Contract Manager may reasonably expect that a fee earner can read and absorb its contents at a faster rate
  - where the prosecution may rely on an exhibit for continuity purposes, rather than analysing its contents (for example, where the whole of a computer hard drive is listed as an exhibit, but the prosecution have isolated and served separately that portion of it which they see as relevant)
  - The Contract Manager may reasonably expect that a defence team is in a position to deal with matters more swiftly and efficiently given their increased familiarity with a case
  - The Contract Manager may reasonably expect that a particular defendant's instructions, or the nature of their defence, may significantly assist the team in focussing on relevant tranches of evidence
  - The time requested to read evidence exceeds the time available from the moment of request to the expected conclusion of proceedings, taking into account the resources available for the task.
- 4.32 Where appropriate, the Contract Manager may allow a block of hours for an initial sift of the material, after which the onus will be on the defence team to persuade the Contract Manager that particular portions of evidence are so significant that they require further and more detailed attention.

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### *Unused material*

- 4.33 Unused material may be served voluntarily by the prosecution or in response to specific requests for disclosure by the defence.
- 4.34 In requesting time to read this material, defence teams must convince their Contract Manager of the particular relevance of this material to their defendant, and its potential to undermine the prosecution's case or assist the defence case.
- 4.35 Where the prosecution serve tranches of such material at the outset of the case, the Contract Manager will expect to allow reading time at a rate of no higher than one minute per page. A Contract Manager may wish to allow a lower rate where one or more of the factors listed above at paragraph 4.30 apply.
- 4.36 Where appropriate, as with evidence, the Contract Manager may allow a block of hours for an initial sift of the material, after which the onus will be on the defence team to persuade the Contract Manager that particular portions of material warrant further or more detailed consideration.
- 4.37 If the consideration of large volumes of material involves simple data extraction which is a quasi administrative task, the Contract Manager may allow for this at Level C standard rates
- 4.38 In rare circumstances, the Contract Manager may allow in excess of the standard allowances listed above. Where this is so, it will be expected that the defence teams will provide evidence to persuade the Contract Manager that the material in hand is of exceptional difficulty or complexity in comparison to the majority of work that takes place within the VHCC scheme.
- 4.39 If a bundle of material of particular density is served within a much larger tranche of material, the defence team must satisfy their Contract Manager that the material's complexity is not offset by volumes of other material of far lower complexity in order to justify a higher reading rate per page.

### *Scheduling and other work*

- 4.40 Where the defence team can show that there is particular benefit to the preparation of the defence to create schedules of evidence, or other documents that may assist the case preparation (eg chronologies, dramatis personae) the Contract Manager may allow time for this. Requests for time will be assessed on a case by case basis.
- 4.41 For VHCCs with trial estimates of 60 days and under, Contract Managers will have regard to the schedule at paragraph 4.78 of the 2010 VHCC Contract Specification (for Organisations), which addresses workshifting. Where the responsibility for a task within that schedule rests with the Advocate, no payment will be made under the terms of the VHCC 2010 Contract for that specified task. The instructed Advocate in a case will claim payment in accordance with the terms of the AGFS.

### *Confiscation Proceedings*

- 4.42 Confiscation proceedings follow on from criminal proceedings where a defendant has been convicted and the prosecution has reason to believe that s/he has gained material benefit from the particular criminal activities on the indictment, and/or a

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general criminal lifestyle. Where the governing regulations for proceedings are in the Criminal Justice Act 2003 (CJA) or Drug Trafficking Act 1994 (DTA) confiscation takes place in the High Court. Where proceedings take place under the Proceeds of Crime Act 2002 (POCA), the venue is the Crown Court. All such proceedings are considered incidental to the substantive criminal case (see Regulation 3 of the CDS General Regulations) and such work is therefore remunerated under the Representation Order. Restraint proceedings incidental to a criminal charge are also covered by the same Representation Order.

4.43 The following work by Litigators and Advocates in confiscation proceedings is remunerated under the Representation Order:

- preparation up to and including the making of a confiscation order;
- post the making of an order, any application for variation; and
- applications for a certificate of inadequacy.

4.44 Enforcement proceedings of a sentence in default of payment in the magistrates court are not within scope of the 2010 VHCC Contract.

4.45 Contract Managers will be mindful of the following issues in particular:

- (i) whether there is a transfer of organisation and/or Advocate between the conclusion of the substantive criminal proceedings and the start of confiscation. It should usually be possible to avoid an entire re read of case material, and focus, instead, on issues particularly relevant to confiscation, and key documents in existence.
- (ii) how the prosecution puts its case, under what authority, and what the prosecutor's statement actually says. The prosecutor's statement is likely to highlight assets in which there is particular interest and could be a significant factor which may assist the defence in focussing on material relevant to confiscation, particularly if the team for the confiscation did not conduct the main defence. It is preferable for the Contract Manager to see the prosecutor's statement before agreeing large numbers of hours.
- (iii) whether a restraint order is already in place. If so, work already done in relation to this may be of significant assistance in preparation on confiscation work.
- (iv) whether the defendant was found guilty after trial or whether s/he entered a guilty plea, and whether there was an agreed basis for that plea. In some circumstances this may indicate that some or much of the material in the substantive proceedings is no longer at issue, therefore obviating the need for extensive reviewing of that material.
- (v) whether the level of fee earner requested reflects the legal work being done, and whether there is appropriate division of tasks among the defence team as a whole.
- (vi) whether the work requested overlaps with work in pursuit of an appeal against conviction or sentence. This work should not be paid for as work done in preparation for appeal against conviction or sentence is not within the scope of the VHCC Contract.

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### *Audio tapes and probe evidence*

- 4.46 Time may be agreed for Litigators to listen to an interview tape where the accuracy of any available transcript cannot be confirmed, or where there is no transcript. Contract Managers will usually only agree to an accuracy check being undertaken at Level C standard rates. The usual request and allowance to consider tapes/discs is the running time, plus half the time again for an accuracy check.
- 4.47 Where the Advocate instructed is also working under contract, s/he may also request time to listen to interview tapes and/or probe evidence. It should be noted that it would not generally be agreed for instructed Advocates to undertake any additional accuracy checks. If further analysis of specific tapes or sections of tapes is required, reasons should be provided to the Contract Manager to justify any extra time allowed.
- 4.48 Time to consider audio probe evidence would normally be agreed at 1.5 minutes per minute of tape for the conversations only – the CCU will not pay for listening to those portions of the tapes that contain silence. The task can be undertaken on this basis with the running time of the salient parts confirmed after completion of the task

### *Translators and interpreters*

- 4.49 Where the client is a non-English speaker, it may place an unfair burden upon the public purse to translate all the papers for the client. In these instances the LSC would expect the Litigator to identify those parts of the papers which are of key importance, and have those copied or translated.
- 4.50 Where the defendant or witnesses require interpreters at court, the presumption will be that attendant costs will be met out of Central Funds unless the court specifically directs otherwise.

### *Litigators' attendance at court*

- 4.51 Attendance at court by a Level A or B fee earner will not normally be allowed, and in any event only when matters addressed are of very particular significance to a defendant's case, and of some complexity. At all other times it would be usual for a Level C fee earner to attend.
- 4.52 Where an organisation instructs an agency to provide an outdoor clerk, the LSC will pay only the agency fees and not the hours undertaken at Level C fee earner rates.

### *Multiple fee earners*

- 4.53 Where a single organisation represents more than one defendant in the same case, the CCU will expect to see some economy of scale in the work done, and will not anticipate that the organisation will replicate work done and costs claimed for each defendant represented. Where Litigators attend court hearings, if an organisation is representing more than one defendant it is not an automatic assumption that more than one fee earner will attend. Where possible, it will be expected that notes made by a single fee earner can be of use to more than one defendant or instructed Advocate. If a Contract Manager considers that the attendance at court is appropriate by more than one fee earner for a particular section of the trial, it may be that this is not authorised for the entire trial.

### *Administrative work*

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- 4.54 The basic principle is that, subject to any express exceptions, payment will not be made for time spent on purely administrative matters. Administrative work is any work that is not directly part of the legal preparation of the defendant's case. The LSC will pay for work directly involved in the provision of contracted legal services to the client. Thus office overheads (ie. the costs of running the organisation) are not recoverable under the Contract.
- 4.55 Organisations and self-employed advocates working under a Contract will not be paid for preparing, checking or signing a claim for costs.
- 4.56 Contract Managers will be aware of certain tasks that are quasi-administrative. This means that there is an element of the work involved which does not require any legal expertise. Below is a non exhaustive list of examples of the type of task which could be deemed as quasi-administrative and standard rates applied:
- checking tapes/discs for accuracy against transcripts
  - collating material
  - a less complex sift of unused material sift

### *Legal research*

- 4.57 The LSC would normally expect Litigators and Advocates to be reasonably familiar with the area of law within which they practice. Therefore, as a general rule, Contract Managers will only consider agreeing for research of law that is novel, developing or complex.

### *Video links*

- 4.58 Where video link facilities are available at court, the provider should consider making use of these facilities for conferences with the client, to save on travel costs. Video links may be installed at a provider's offices. The costs of installation and rental of the telephone line are not client specific and may not therefore be recovered under the Contract. It is considered appropriate to allow reasonable costs of accessing video link facilities outside a provider's offices, where this is a less expensive option than attending the client in person, to be paid as a disbursement.
- 4.59 Where video links are used during trial, it will be expected that attendant costs will be met out of Central Funds unless the court specifically directs otherwise.

### *Transcription of tapes*

- 4.60 If prior authority is sought in respect of the transcription of tape recordings, when determining such applications Contract Managers should satisfy themselves that:
- (a) the litigator has listened to the tape
  - (b) the tape contains evidence which is relevant to the defence
  - (c) there is a dispute about the content or admissibility of such evidence and that such dispute has not been resolved by discussions with the prosecution, or that there are good reasons for not entering into such discussions, or for believing that such discussions would not lead to resolution
  - (d) the evidence on the tape cannot be adduced by means other than the provision of a transcript, or that the provision of a transcript will be the most efficient means of adducing such evidence

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- (e) the litigator has ascertained from the prosecution whether they will be preparing a transcript
- (f) the transcription will be confined, where practicable, to the material relevant to the dispute.

### *Purchase of tapes*

- 4.61 The LSC will not bear the cost of replacing a tape damaged, lost or mislaid by a defence team or defendant.

### *Expert counsel*

- 4.62 Where an Advocate is asked to give an opinion as an expert, in a field of law other than criminal, the organisation may seek authority to incur this expenditure. Contract Managers would need to determine whether or not the providers (Litigators and/or Advocates) themselves had the requisite knowledge before agreeing to any expenditure.

### *Courier costs*

- 4.63 Generally, Contract Managers will not agree to the payment of courier costs, as this will form part of the supplier's office overheads. There may be exceptions to this when the LSC acknowledges that there is no realistic alternative to delivery by courier. Such circumstances may include the delivery of sensitive material which cannot be delivered through post or DX, or the need to meet tight deadlines which do **not** arise as a result of poor organisation or practice on the part of the defence team..

### *Transfer hearings and sendings.*

- 4.64 Litigators attending such hearings in the magistrates court without an Advocate will be remunerated as follows:
- Level A or B Solicitor Advocate Alone. The Junior Alone preliminary hearing rate will be applied.
  - Any preparation undertaken will be paid at the normal Litigator preparation rates and not the Solicitor Advocate rates.

### *Refresher Fees*

- 4.65 The following paragraphs apply only to VHCCs with trial estimates in excess of 60 days, where an instructed self employed advocate will be working in accordance with the VHCC Contract Specification (for self employed advocates).
- 4.66 Where a pre trial hearing sits in court for more than two hours or during any sitting day of the trial at which an instructed advocate is in attendance, refresher rates will be applied to the instructed Advocate's payment.
- 4.67 The full day rate assumes that the advocate will spend five hours in court and two hours on preparation. This two hours preparation does not have to be separately authorised by the Contract Manager. Similarly, the half-day rate includes one hour of preparation.

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- 4.68 For either a full or half day, the Advocate should always make a detailed record of the preparation work that they have conducted within the two hours or one hour included in the refresher respectively. This will enable the CCJ to assess how that preparation time has been used before agreeing to pay for any additional preparation conducted during the trial stage.
- 4.69 If an Advocate has not conducted the full two hours preparation allowed within the refresher, they will still be paid either the full or half day rate. However, the Advocate may not ask for additional preparation time where they have not conducted preparation within the hours allowed within the refresher. The Contract Manager will allow additional time agreed for preparation during the trial only when the Advocate is able to demonstrate how the preparation time in the refresher has been spent. The refresher time can be used at any point during the day, and is not limited to between 9am and 5pm.
- 4.70 For fractured trial days (eg if court only sits for 20 minutes in the morning and the rest of the day is then taken up by case preparation), the Advocate will be paid the half day rate. Preparation undertaken, which is over and above the one hour included in the refresher, will be paid for separately. This could take place in circumstances where extra material were served unexpectedly necessitating an extended conference.
- 4.71 The following table is a summary of advocacy payment rates for VHCCs.

<b>What type of hearing?</b>	<b>How long does the court sit?</b>	<b>What rate is applied?</b>	<b>What does the rate cover?</b>
Pre trial hearing	Less than 2 hours	Hearing rate	Advocacy in court only
Pre trial hearing	Between 2 hours and 3.5 hours	½ day refresher rate	Advocacy in court and up to 1 hour of attendance/ preparation
Pre trial hearing	More than 3.5 hours	Full day refresher rate	Advocacy in court and up to 2 hours of attendance/ preparation
Trial day	Less than 2 hours jury deliberation	½ day refresher rate, plus waiting time in excess of 3.5 hours (minus 1 hour for lunch)	Advocacy in court and up to 1 hour attendance preparation.
Trial day	Less than 2 hours	½ day refresher rate	Advocacy in court and up to 1 hour of attendance/ preparation
Trial day	Between 2 hours and 3.5 hours	½ day refresher rate	Advocacy in court and up to 1 hour of attendance/ preparation
Trial day	More than 3.5 hours	Full day refresher rate	Advocacy in court and up to 2 hours of attendance/ preparation

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### *Livenote*

- 4.72 All applications for livenote should be made on the CCU's livenote application form and sent to the CCU in the London or Liverpool offices for approval.
- 4.73 The LSC will pay for a maximum of two connections per client and three connections where two clients are represented. If more than two clients are represented by the same organisation, then the connection would increase by one for each extra client. The LSC will pay the appropriate share of the one off and daily set up fees – ie one third of the costs divided by the number of organisations receiving livenote.
- 4.74 The LSC will not pay for any form of training in the use of livenote, any laptop hire, second or subsequent copies of transcripts in paper or disk format, delivery of transcripts, remote connections or any other element of quoted costs relating to livenote.
- 4.75 All livenote invoices should be billed at the end of the relevant stage and not presented for mid stage payment unless practitioners have paid Livenote in advance and can demonstrate there is real hardship in the deferral of reimbursement.
- 4.76 In the absence of exceptional factors, a Contract Manager will expect to authorise reading of the livenote transcript at one minute per page. The expectation would be that only one member of the defence team would read the transcript to obviate the need for duplicated costs, and that this would be done either by the junior Advocate or by a Level B Litigator.

### *Task list amendments*

- 4.77 It is not the expectation of the CCU that a fully updated task list be sent to the Contract Manager after every amendment. The Contract Manager should use discretion to decide when it is appropriate to request an updated task list.

### *Conflicts of interest*

- 4.78 Where the CCU has information to suggest there is a risk of conflict of interest, it may raise this issue with the defence team or practitioner concerned. In some circumstances, the CCU may seek to raise the matter with the court and/or the relevant Professional Body, although any communication will have regard of the need to respect client confidentiality and privilege.
- 4.79 There may be cases where a possible conflict of interest is identified, and the CCU discusses this risk with the practitioner involved. The practitioner may take the position that the risk is low and it is appropriate to continue conduct of the case. If, in such circumstances, the practitioner then withdraws from the case at a later stage, for reasons of conflict, the CCU may seek further information to determine whether this should have been done earlier to avoid prejudice to public funds. In some cases, where the CCU considers the practitioner has not acted appropriately, it may seek to withhold funds or seek a recoupment of funds paid.

### *Unreasonable return of brief*

- 4.80 The CCU may determine the return of a brief unreasonable when factors which trigger that return appear to have been foreseeable and avoidable, or if it appears

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that the instructed Advocate has made insufficient commitment to retaining the case. Examples could include:

- accepting instructions on two or more cases where there is a clear and high risk of trial dates clashing
- inappropriate prioritisation of personal commitments over professional commitments
- returning a brief for reasons of conflict (see above) when it could reasonably be expected that the risk could have been identified earlier.

4.81 This is not a comprehensive list and the CCU would make an assessment on a case by case basis, taking into account also whether the Advocate instructed had sought professional conduct advice, and what that advice was. The CCU would expect that a return of brief would result in duplicated costs, and for an unreasonable return, would consider whether it would be appropriate to withhold, or recoup, some or all of funds due or paid.

### *Experts*

4.82 Prior to assessing experts' quotes, the Contract Manager should consider whether it is reasonable in principle to instruct an expert. Factors to be considered may include:

- Whether expertise is capable of being attached to the area of knowledge in question
- Whether and how the expert's report may assist the defendant's case
- Whether the prosecution has instructed an expert, and the nature of that expert's report.

4.83 Factors that a Contract Manager should take into account when assessing a quote from an expert include:

- Does the expert have the experience and skills necessary to give cogent advice in a case of this nature?
- Are the proposed hourly rates reasonable?
- Are the anticipated hours necessary?
- Is it reasonable to instruct an expert based in that particular location?

4.84 Information that should be provided about the quote to enable the Contract Manager to make that assessment includes:

- Advice from counsel (if necessary)
- Hourly rate of the expert for preparation and travel (generally around one third to one half of the preparation rate) – including lower level fee earners assisting the expert
- The division of labour between the different levels of expert
- The breakdown of hours required for reading case papers, analysis of information and preparation of report
- Any anticipated disbursements.

4.85 The LSC would not pay for the expert to produce a quote for the work. If the expert needs to undertake preliminary reading of case papers to produce a quote, the LSC would only pay for the time spent reading (at an agreed formula per page), if the

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quote is accepted. This is on the basis that the reading is not duplicated post instruction and will be used by the expert to draft their report.

- 4.86 If the organisation wish to instruct a second expert, the presumption will be that the LSC will not pay for this unless there are exceptional circumstances. Such circumstances may include unforeseeable developments in the area of expertise which alter the nature of the advice required, or the death of the expert initially instructed. The LSC will not pay for a second expert simply because the defence team are unhappy with the conclusions of the first.

## Claims Assessment and Remuneration

### *Assessment Bundles*

- 4.87 At Paragraph 5.5 (b) of the Specifications "time of day" is taken to mean the specific time (e.g. 10am), or at least an approximation thereof, as opposed to merely differentiating between morning and afternoon.

### *VHCC Distant Travel*

- 4.88 With regard to Paragraphs 5.36 to 5.39 of the Contract Specification for Organisations, and Paragraphs 5.26 – 5.30 of the Contract Specification for Self Employed Advocates, an organisation is deemed local if, at the point of instruction, it is within one hour's or 25 miles' travel from the client. A self employed advocate is deemed local if, at the point of instruction, s/he is within one hour's or 25 miles' travel from the designated trial court.
- 4.89 All local practitioners are entitled to full remuneration of actual travel, regardless of whether the circumstances of the case change after their instruction (for example if the client is taken into custody at a distance, or the trial venue is moved unforeseeably). If there are no local practitioners, because the client lives in a remote area or there is no Bar local to the trial court, then those practitioners who are as near as possible to either client or court respectively will be deemed local.
- 4.90 Where Litigators or Advocates are not local, remuneration for travel will be restricted to a maximum detailed in Paragraph 5.36 of the 2010 VHCC Specification. Exceptions may be made if practitioners can demonstrate:
- (a) they have particular skills or expertise which make them uniquely suitable to conduct the case
  - (b) they have had significant involvement with the client in the current proceedings, or previous linked proceedings, so that it would not be in the interests of justice or the public purse for an alternative, more local practitioner to be instructed
  - (c) there is no other suitable, more local practitioner available
  - (d) the overall circumstances are such that to instruct a particular non local practitioner would result in savings to the public purse.
- 4.91 Where the VHCC Distant Travel Rule is applied and restrictions imposed, that restriction will apply to all travel where the instruction of a local practitioner could reasonably be expected to be more economical. Where there are no local practitioners available and none of the exceptions above are met, the CCU would expect to see efforts made to instruct a practitioner as local as possible.
- 4.92 Where the client is based out of the jurisdiction it is not reasonable to expect him or her to instruct a defence team locally, and so the VHCC Distant Travel Rule is effectively disapplied. In these circumstances the CCU will assess requests for travel on the overall circumstances of the case taking into account the client's travel arrangements into the country, his or her accommodation arrangements whilst residing in the jurisdiction, the location of witnesses and of the court.
- 4.93 Where more than one mode of transport is available, provided the approximate travel time is the same, the CCU will expect that the practitioner will travel by the most

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economical method available unless s/he can provide specific justification why this should not be so.

### *Defendant's travel expenses*

- 4.94 The overwhelming presumption is that a defendant's travel expenses will not be paid save in wholly exceptional circumstances. As a prerequisite, defence teams must demonstrate that the client in question is impecunious, and provide extensive and detailed supporting evidence. The CCU must then be satisfied that the overall circumstances of the case are exceptional according to the particular facts, so that in no circumstances could the defendant be expected to pay for his or her own travel, and to withhold such expenses would compromise the administration of justice.

### **Additional guidance on payment and disbursements**

#### *Photocopying and electronic evidence*

- 4.95 Where the prosecution serve the bulk of their case electronically, the CCU will expect that practitioners will work electronically, and bear the cost of printing out specific pages if these are small in number. If the defence team requires a further paper copy of a whole bundle, or large sections thereof, the CCU will expect in the first instance that the defence team will request copies from the prosecution.
- 4.96 The LSC will seek to work cooperatively with prosecuting agencies, the court, and other involved parties on this issue, and have regard to any protocol agreed between and published by interested parties.
- 4.97 Where photocopying is authorised, it will be expected that this will be at no more than four pence per copy ( A4 black and white).

#### *Quasi administrative work*

- 4.98 Where large quantities of material are served without index or pagination, the CCU may allow remuneration for some time in organising the material if it can be shown that this assists the case preparation, and is likely to result in a net saving of time and costs. Quasi-administrative work will be paid at Level C standard rates.

#### *Correspondence*

- 4.99 There will be a weekly allowance of half an hour per week for routine correspondence, from the beginning of the case (including Pre-Contract Stage) to the day before trial. During and after trial the CCU will allow 15 minutes per week. There will be an allowance of additional 10 minutes per week (up to an hour) per additional defendant. This is a flat allowance and there will be no assessment on a case by case basis.
- 4.100 Advocates are not entitled to any allowance for routine correspondence.
- 4.101 It will be expected that letters or telephone calls that take more than ten minutes will not be claimed as correspondence, but will form part of a larger task. There is no allowance, per se, for non-routine correspondence.

#### *Witness expenses*

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- 4.102 Payment to a witness attending to give evidence at court is made through Central Funds. Where expert witnesses attend court to assist the defence other than through giving evidence, (for example liaising with the defence team at key points during trial) the LSC may provide payment if requests are assessed as reasonable.

### Appeals

- 4.103 VHCC Appeals in relation to funding are governed by the VHCC Appeals Panel Arrangements 2010 (Appeals Panel Arrangements), and by Paragraph 6 of the Contract Specification for both organisations and self employed advocates.

#### *The VHCC Appeals Panel and its powers*

- 4.104 The VHCC Appeals Panel will only hear appeals made in accordance with Paragraph 6.4 of the Specifications. Other contractual disputes may be dealt with under Clauses 27 and 28 of the Standard Terms, which provide mechanisms for informal reconsideration and formal review. Decisions which are not made in accordance with any contractual provisions may be subject to judicial review. (see Annex B)
- 4.105 Once a decision has been adjudicated either by a Single Adjudicator or a Committee, a defence team will have no right to request that the same issue be redetermined by an Adjudicator or Committee unless there is a material change in circumstances.
- 4.106 The decision of the Single Adjudicator, or of the Committee, is final. Should a defence team wish to challenge the decision of an Adjudicator or Committee, their remedy is through Judicial Review
- 4.107 When adjudicating an appeal a Single Adjudicator or Committee may either a) refuse the appeal b) allow the appeal or c) allow the appeal in part.
- 4.108 Any applicant for membership of the VHCC Appeals Panel will be expected to present a letter of application and accompanying CV to the CCU. The applicant's suitability will be assessed according to evidence of his or her experience as a practitioner, his or her experience of and expertise in VHCC work, and any relevant judicial or quasi-judicial experience.
- 4.109 The assessment and appointment of Appeal Panel Members will be made by the LSC High Cost Cases Director in consultation with the Appeals Panel Chair.
- 4.110 Adjudicators and Committee Members will be selected to sit on appeals on a strict rotation basis, subject to availability and conflicts of interest. This process may be circumvented only exceptionally, in accordance with Paragraph 5.5 of the Appeals Panel Arrangements. This might take place where, if the issue being appealed is of particular complexity, or requires particular expertise, the LSC considers it appropriate to ensure that the Single Adjudicator or Committee is in a position to provide the appropriate skill and experience. The LSC will inform the appellant defence whether a Single Adjudicator or Committee has been assigned to their appeal.
- 4.111 If an appeal is exceptionally complex or significant, the LSC may insist on the matter being heard by a full Committee as opposed to a Single Adjudicator (Paragraph 16.3 of the Appeals Panel Arrangements). A Single adjudicator may refer an appeal to full committee if it is in the interests of justice to do so. It is not anticipated that lack of

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clarity in the written submissions would of itself merit referral in accordance with this paragraph.

- 4.112 Unless a referral to full Committee takes place or, pursuant to Paragraph 6.8 of the Specifications, the Single Adjudicator requests oral representations, the Single Adjudicator will determine the issue on the papers.
- 4.113 Where the CCU takes any decision in accordance with paragraphs 4.109 and 4.110 above, it will keep a written record of its decision and the reasons for that decision.
- 4.114 In accordance with Paragraph 19.2 of the Appeals Panel Arrangements, an Annual General Meeting may include a training event and review of the performance of Adjudicators and Committees. A training event may include any relevant update on regulatory provisions, practice and procedure. Performance review may include an analysis of appeals refused and upheld and relevant implications, circumstances in which Single Adjudicators have deemed it appropriate to make referrals to full committees, and any challenges to decisions that may have taken place.

### *The appeal process*

- 4.115 It will be expected that the Contract Manager will give a specific indication to the defence team that the timetable for the appeal process has been triggered, detailing that there are ten Business Days for the defence team to submit their Appeal Form. This time limit is subject to extension by agreement.
- 4.116 Neither party to the appeal will be in a position to insist on an adjournment of the appeal without the other's agreement. In the absence of agreement, any application for an adjournment will be settled by the Adjudicator or Committee.
- 4.117 There will be no contact between LSC staff and the Adjudicator or the Committee in the period preceding an appeal, other than in relation to the administration of the appeals procedure. No conversation regarding the substantive issues of the appeal will take place. If it should become necessary, before an appeal hearing itself, to place further information before the Adjudicator or the Committee, the Appeals Clerk will ensure both the appellants and the Contract Manager are copied into any relevant correspondence.
- 4.118 The Appeals Clerk will request that Adjudicators and Committee Members seek to identify any possible conflict as early as practicable, where possible in advance of any hearing. If necessary alternative Adjudicators or Committee Members can then be arranged in order to deal with the appeal, avoiding the need for adjournments.
- 4.119 Where there is a full hearing of the matter, if appellants wish to instruct a third party to attend on their behalf, they should notify the LSC in advance of the hearing.

## **5 2011 ICC Contract Specification (for organisations)**

- 5.1 Clause 3 refers to the necessary service standards for carrying out 2011 ICCs. The Eligibility Criteria are those contained within Annex C of the Arrangements, and reflect the requirements set out for the granting of a 2010 Standard Criminal Contract.
- 5.2 Clauses 3.3 to 3.18 set out the requirements for an organisation conducting a 2011 ICC to have in place an appropriately qualified ICC Supervisor.

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- 5.3 An ICC Supervisor may be a fee earner who meets either
- a) the VHCC supervisor standards; or
  - b) the Crime Category Supervisor Standards.
- 5.4 Clause 5.1 of the 2011 ICC sets out that all remuneration for ICC work undertaken in accordance with the 2011 ICC will be in accordance with the CDS (Funding) Order 2007 (as amended) (“the Funding Order”); that is, under the terms of the appropriate graduated fee scheme.
- 5.5 Clause 6 sets out that where a dispute on a funding issue arises on a case conducted under a 2011 ICC, any appeal will be either to a Costs Judge, in accordance with the Funding Order, or under Clause 27 and Clause 28 of the Standard Terms. There will be no right of appeal to the VHCC Appeals panel.

Comment [M1]: Committee?



**Annex A: VHCC Deadlines Timetable**

The following timetable is a quick reference guide to the deadlines set out in the VHCC Arrangements 2010 and the 2010 Contract Specifications and is not a full process flowchart. NB. Deadlines for unusual events (eg changes to fee earner status and VHCC Supervisor absence) are not included in this timetable. For an indicative timetable for the VHCC Accreditation process please see the Information for Applicants on the LSC Website.

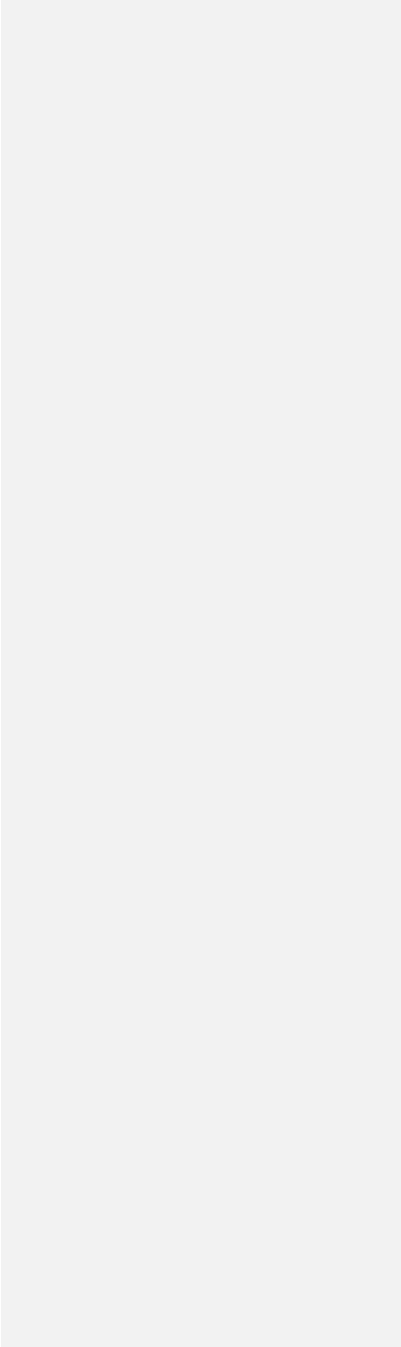
Action		Deadline
Notification	Organisation to submit Notification Request Form to CCU	Within five Business Days of: (a) the earliest hearing at which the court sets a trial estimate; or (b) the organisation identifying that the case will be or is likely to be a VHCC.
Contracting	Organisation and/or self-employed Advocate to submit a signed copy of the 2010 VHCC Contract (for organisations) and 2010 VHCC Contract (for self-employed Advocates)	Within fifteen Business Days from the date of the VHCC Decision Letter.
	Organisation to: (a) nominate a VHCC Supervisor to have overall responsibility for the VHCC and complete the self-declaration form; (b) submit a Case Plan and Stage 1 Task List (for organisations); (c) submit a completed VHCC Category Assessment Sheet, which will be assessed by us in accordance with Annex C of these Arrangements; (d) submit a copy of the Representation Order; (e) submit a copy of the Case Summary (if available); (f) submit a copy of the Client Care Letter; and (g) submit a summary of the VHCC Work undertaken during the Pre-Contract stage.	Within fifteen Business Days from the date of the VHCC Decision Letter unless otherwise agreed between the organisation and the CCU.

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Action		Deadline
Contracting	Where the case satisfies the definition of a VHCC for Advocates, the self-employed Advocate to: (a) submit a Stage 1 Task List (for self-employed Advocates) (b) submit a summary of the VHCC Work undertaken during the Pre-Contract Stage	Within fifteen Business Days from the date of the VHCC Decision Letter unless otherwise agreed between the self-employed Advocates and the CCU.
Stage 1	The VHCC Contract Manager will contact the organisation and/or self-employed Advocate to either: (a) agree the contents of the Task List; or (b) arrange a Stage meeting.	Within five Business Days of receipt of a fully completed Task List.
	Stage meeting to take place (where applicable).	Within a reasonable and agreed time.
	VHCC Supervisor to send an updated Task List to the VHCC Contract Manager.	Within five Business Days of the Stage meeting.
Subsequent stages	VHCC Supervisor to submit a Task List for each subsequent Stage to the VHCC Contract Manager.	Within ten Business Days of the start of the Stage.
Task List Amendments	CCU to respond to any amendment requests.	Within five Business Days of receipt of the request, subject to requests for further information.
	VHCC Supervisor to send an updated Task List to the VHCC Contract Manager.	Before the end of the Stage to which the Task List relates.
Trial Stage	VHCC Supervisor to contact the VHCC Contract Manager to discuss changes to the VHCC arising from the trial.	Every four weeks during the trial.
Provision of Advocacy Services	Where an organisation has instructed an employed Advocate after the Contract Start Date and after a Stage 1 Task List has been agreed, the organisation must submit a Task List for VHCC Work being undertaken by the employed Advocate.	Within ten Business Days of instruction.

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Action		Deadline
Claims, Assessment and Remuneration	Assessment Bundles to be submitted to the CCU.	Within twenty Business Days of the Stage end date.
	CCU to complete Assessment and send report and payment form to organisation or self-employed advocate.	Within twenty Business Days of receipt of the Assessment Bundle, subject to requests for further information.
	Signed payment form returned by organisation or self-employed advocate to CCU.	Within ten Business Days of the date on the Assessment report.
VHCC Appeals	Appeal representations lodged with CCU.	Within ten Business Days of receipt of the original decision.
	CCU to send copy of Appeal Response to appellant.	Within ten Business Days of receipt of appeal representations.
	Appeal bundle sent to Single Adjudicator	Within ten Business Days of completion of Appeal Response.
	Single Adjudicator to decide appeal or decide to refer appeal Committee.	Within ten Business Days of receipt of appeal bundle.
	Decision by Single Adjudicator communicated to appellant.	Within five Business Days of the decision.
	Where applicable, Committee hearing to be arranged.	Within twenty Business Days of the date of the decision to refer.
	Where applicable, Committee hearing to take place.	Within thirty Business Days of the date of the appeal response.
	Where applicable, Committee provided with copy of appeal bundle.	No later than five Business Days prior to the Committee hearing.
	Further supporting evidence provided.	Within three Business Days prior to the Committee hearing.
Committee decision communicated to appellant and respondent.	Within five Business Days of the Committee hearing, subject to any reasonable delay.	



Annex B: VHCC Appeals Process Diagram

