

## **2010 Standard Crime Contract - Specification**

### **PART B – SPECIFIC PROVISIONS ON CLASSES AND UNITS OF WORK**

#### **9 CRIMINAL INVESTIGATIONS**

##### **Work conducted at the Police Station: Police Station Advice and Assistance**

###### **Scope**

- 9.1 You may provide Police Station Advice and Assistance under this Unit of Work to a Client (including a Volunteer) as Own Solicitor or Police Station Duty Solicitor during a Criminal Investigation, unless the Matter is a CDS Direct Matter which is excluded from the scope of this Specification (see Paragraphs **9.8 to 9.13**).
- 9.2 You must not include in your Claim for Police Station attendance for an ineffective bail to return if you did not check prior to the attendance to establish whether it would be effective.

###### **Witnesses**

- 9.3 You can only provide Advice and Assistance to a witness if there is a complicating factor (as set out in Guidance).
- 9.4 Providing Advice and Assistance to a witness may only be claimed as Free Standing Advice and Assistance under Paragraphs **9.117 to 9.144**, and not under the Police Station Advice and Assistance Fixed Fee Scheme.

###### **Complaints of maltreatment by the police**

- 9.5 Complaints of maltreatment by the police should be dealt with as part of the general advice on the overall case, and no separate Fixed Fee may be claimed for providing such advice.
- 9.6 The only time a separate application for Free Standing Advice and Assistance under Paragraphs **9.117 to 9.144** may be granted (in addition to advice provided under this Unit of Work) is where the nature of the complaint raises a serious and proper issue which cannot be dealt with within the context of the general criminal advice being given.
- 9.7 These cases must not be confused with claims against the police in relation to wrongful arrest, false imprisonment or malicious prosecution for which an application for funding can be made to the LSC as part of the CLS. Complaints

of serious wrongdoing or abuse of position or power, are also funded as part of the CLS as claims against public authorities and not the CDS.

### **CDS Direct**

9.8 Matters which fall within the scope of CDS Direct are excluded from the scope of this Contract.

9.9 The following matters fall within the scope of the CDS Direct scheme. They are not covered by the scope of this Contract and you cannot claim for Police Station Advice and Assistance provided in these circumstances unless one of the exceptions in Paragraph **9.10** applies:

- (a) Client detained in relation to any non-imprisonable offence;
- (b) Client arrested on a bench warrant for failing to appear and being held for production before the court, except where you have clear documentary evidence available that would result in the Client being released from custody, in which case attendance may be allowed provided that the reason is recorded on file;
- (c) Client arrested on suspicion of:
  - (i) driving with excess alcohol, who is taken to the Police Station to give a specimen (Section 5 Road Traffic Act 1988);
  - (ii) failure to provide a specimen (Sections 6, 7 and 7A Road Traffic Act 1988);
  - (iii) driving whilst unfit/drunken in charge of a motor vehicle (Section 4 Road Traffic Act 1988).
- (d) Client detained in relation to breach of police or court bail conditions.

9.10 You may claim for Police Station attendance on any Matter falling within Paragraph **9.9** above if one of the following exceptions applies and the Sufficient Benefit Test is satisfied:

- (a) an interview or an identification procedure is going to take place;
- (b) the Client is eligible for assistance from an appropriate adult under the PACE codes of practice;
- (c) the Client is unable to communicate over the telephone;
- (d) the Client complains of serious maltreatment by the police;
- (e) the investigation includes another alleged offence which does not fall within Paragraphs **9.9(a) to (d)** above;
- (f) you are already at the same Police Station, in which case you may attend the Client but may not claim more than the Police Station Telephone Advice Fixed Fee;

(g) the advice relates to an indictable offence; or

(h) the request is a Special Request.

9.11 If any of the exceptions in Paragraph **9.10** apply then you must endorse the reasons for attendance on file, otherwise you may not make any Claim under this Contract.

9.12 If CDS Direct is unable to provide Police Station Telephone Advice in a CDS Direct Matter then that Matter is not a CDS Direct Matter for the purposes of this Specification and you may provide Police Station Advice and Assistance in accordance with this Specification. This Paragraph does not apply in circumstances where a Client simply refuses to accept advice from CDS Direct.

9.13 If CDS Direct refers a Matter to a Client's Own Solicitor to attend at the Police Station, the Matter ceases to be a CDS Direct Matter and the normal service requirements in this Section apply.

### **Qualifying Criteria**

9.14 The Sufficient Benefit Test is deemed to be satisfied in circumstances where a Client has a right to legal advice at the Police Station and has requested such advice in accordance with s58 PACE. On subsequent attendances in the same Investigation you must ensure that the Sufficient Benefit Test is satisfied before continuing with the Matter.

9.15 There is no Financial Eligibility Test for this Unit of Work.

9.16 You may provide further legal advice to a Client immediately following charge. However, attendance upon the Client thereafter whilst fingerprints, photographs and swabs are taken will not meet the Sufficient Benefit Test except where the Client requires further assistance owing to his or her particular circumstances in which case the relevant factors must be noted on file. You may remain at the Police Station if you are required to make representations about bail, provided that this justification is noted on file.

### **Interview/identification procedures**

9.17 If the police or the DSCC indicate that an interview or identification procedure will take place at a specified time, initial Police Station Telephone Advice may be provided to the Client. You must attend the Police Station in sufficient time prior to the allotted time to undertake reasonable steps that directly relate to the interview or identification procedure.

### **Applications, instructions from the DSCC and first contact with the Client**

9.18 Subject to Paragraph **9.20**, all instructions for Police Station Advice and Assistance must be received from the DSCC who will then contact the Provider from whom the Advice and Assistance is sought, or the Duty Solicitor if so requested.

- 9.19 Subject to Paragraph **9.20**, you must not make any Claim for payment for Police Station Advice and Assistance given to a Client in relation to whom you have received your instructions directly, rather than through the DSCC, and any work carried out on this basis is not Contract Work.
- 9.20 Paragraphs **9.18** and **9.19** above do not apply if:
- (a) a Client attends the Police Station by prior agreement with the Police and requests you to represent him or her, provided that you inform the DSCC by telephone or fax or email within 48 hours of the first attendance at the Police Station, and you actually represent him or her at the Police Station; or
  - (b) your instructions are received from a member of the Client's immediate family or third party of similar status, provided that you report the Matter by telephone or fax or email to the DSCC prior to telephoning or attending the Client; or
  - (c) you are already at the Police Station when a Client requests advice from you as Own Solicitor or Duty Solicitor provided that you report the matter by telephone or fax or email to the DSCC within 48 hours of receiving instructions.
- 9.21 You must record and keep on file details of the reference number which the DSCC provide to you as evidence that your instructions to provide Police Station Advice and Assistance were received from the DSCC.
- 9.22 You must ensure that the contact details of your staff (for Own Solicitor and Duty Solicitor purposes) are kept up to date via the DSCC website.
- 9.23 Subject to Paragraph **9.24**, each time you are first notified that a Client has been arrested and has requested advice, and you have accepted the Matter, you must endeavour to contact the Client (whether in person or on the telephone) within 45 minutes of the call. This standard applies only to the first contact with the Client and does not include subsequent instances of Advice and Assistance at a Police Station. The standard applies to both Own Client and Duty Solicitor work.
- 9.24 You must meet the target set out in Paragraph **9.23** in at least 80% of Matters. Setting the target at this level will account for those instances where you are unable to meet the target for reasons beyond your control.
- 9.25 All Police Station advice files must contain a note of the time at which the call was accepted (either from the DSCC or directly from the Client) and the time at which first contact was made with the Client. Where a fee-earner does not contact the Client within 45 minutes of accepting the case, that fee-earner must note the reason on the file. On Audit, we will take a sample of files and calculate your performance against the requirement in Paragraph **9.23** above. Where no times are noted we will assume that the target was not met. However, before recording non-compliance, we will consider the particular circumstances (including whether any omission to record times was an isolated incident) surrounding any failure.

## Use of Accredited Representatives – Duty Solicitor and Own Solicitor Matters

9.26 Own Solicitor Police Station Advice and Assistance, where not undertaken by a Solicitor, must only be undertaken under this Contract by an Accredited Representative or a Probationary Representative who is registered with us.

9.27 Duty Solicitor Advice and Assistance, where not undertaken by a Solicitor, must only be undertaken under this Contract by an Accredited Representative who is registered with us, and not by a Probationary Representative.

9.28 Those persons indicated in the table may only perform the services set out in the table below.

Duty Work	Duty Solicitor	Accredited Representative	Probationary Representative	Solicitors With PSQ	Solicitor Without PSQ
* Accept initial call from the DSCC requesting Duty Solicitor	Yes	Yes	No	Yes	No
Provide initial telephone advice or attend in person	Yes	Yes	No	Yes	No
<b>Own Client Work</b>					
Accept initial call from the DSCC; Provide initial telephone advice or attend in person	Yes	Yes	Yes	Yes	Yes

\*must be in the full or part time employment of, or a partner in the same organisation as the Duty Solicitor.

9.29 Subject to Paragraph **9.28** and **Section 2** of this Specification, you may use staff who are not employed by you. Any work conducted for you by staff (whether or not they are employed by you) is subject to the Service Standards and your obligations under this Contract which must be met. This includes work conducted by Designated Fee-Earners or Case-workers and by staff who are not designated.

9.30 When you delegate work to a Representative who is not directly employed by you under a contract of employment:

- (a) you must ensure that the Representative is competent to do the work; and
- (b) you must ensure that the Representative is appropriately supervised. You must appoint a Solicitor to act as a “supervising Solicitor” for Representative(s); and
  - (i) if a Fixed Fee is payable, the travel time is counted for the purposes of assessing whether the matter is an Exceptional Case; or
  - (ii) if the Matter is claimable as an Exceptional Case, the time claimed for travel must not exceed 45 minutes each way.

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

9.31 Before attending the Police Station, the Representative must have the telephone number of his or her supervising Solicitor (including an out of office hours number if appropriate). The Representative must be able to contact the supervising Solicitor (or another Solicitor in the organisation with sufficient experience of Police Station work) in case the Representative requires guidance as to how to proceed with the Matter when providing Police Station Advice and Assistance.

9.32 A written report on each Matter must be submitted by the Representative to the conducting Solicitor once the Matter has concluded and at the latest by the next working day.

9.33 A Solicitor supervising Representatives must document, within 7 days of the Representative’s inclusion on the Police Station Register:

- (a) the dates by which each test(s) must be passed in the preceding 12 months in order to avoid suspension from the Register; and
- (b) the process that the supervising Solicitor will use to ensure that the Representative’s work is quality assured.

Failure to comply with this requirement will be construed as a serious shortcoming in supervision justifying suspension under Paragraph **9.38** below.

9.34 If we consider that a Duty Solicitor in your organisation has failed to comply with the Supervision requirements set out in Paragraph **9.33**, then you will not be paid for any work which was not properly supervised under this Specification.

9.35 A Probationary Representative must not provide Police Station Advice and Assistance on an indictable only offence.

9.36 A Probationary Representative must only provide Police Station Advice and Assistance for the Provider at which his or her supervising Solicitor is based.

- 9.37 A Representative must not be employed as a special Constable or in any other capacity that may cause a conflict of interest when undertaking Contract Work.
- 9.38 A Solicitor may be suspended from acting as a Supervisor of Representatives if serious shortcomings in supervision have been identified 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 **Section 6** of this Specification.

### **Mandatory Attendance**

- 9.39 Subject to Paragraph **9.41**, you must provide the following services once a Matter has been accepted:
- (a) attendance at the Police Station to provide advice and attend all police interviews with the Client where the Client has been arrested in connection with an offence;
  - (b) attendance at any identification parade, group identification or confrontation;
  - (c) attendance at the Police Station where the Client complains of serious maltreatment by the police.
- 9.40 If exceptional circumstances exist which justify non-attendance at the Police Station, the Solicitor or Representative must record his or her decision not to attend, including details of the exceptional circumstances and the reasons for the decision on the case file.
- 9.41 Attendance at video identification parades is at your discretion. Where attendance is justified this is within the scope of this Unit of Work and the costs of which may be included in a claim for a Police Station Attendance Fixed Fee and, if applicable, in a claim for your costs to be assessed by us if the Matter is claimable as an Exceptional Case.

### **Additional service requirements for Duty Solicitors**

- 9.42 You must comply with the provisions of **Section 6** of this Specification.
- 9.43 Subject to Paragraphs **9.44** and **9.45** below, the following services must be provided once a case has been accepted:
- (a) initial advice by a Duty Solicitor (or, if appropriate in the circumstances of the Matter, an Accredited Representative) personally by speaking to the Client either on the telephone or, advice in person if the Duty Solicitor (or Accredited Representative) is at or near to the Police Station and can immediately advise the Client. Where the police refuse to permit the suspect to speak to the Duty Solicitor (or Accredited Representative) on the telephone, the Duty Solicitor (or Accredited Representative) may attend the Police Station. If the Client is incapable of speaking to the Duty Solicitor (or Accredited Representative), initial advice may be postponed. The Duty Solicitor (or Accredited Representative) must make

arrangements to provide initial advice as soon as the Client is capable of speaking to him or her;

- (b) the provision of advice where a Client is to be charged with an offence on the implications of the caution which will be given when the Client is charged. Consideration must also be given as to whether attendance should take place at that time bearing in mind whether it is possible to give confidential telephone advice and the possible consequences of not making a statement when being charged;
- (c) if a police interview and any identification parade, group identification or confrontation is postponed to a time when the Duty Solicitor is no longer on duty or, if on a Panel, where it is no longer convenient to act as a Duty Solicitor, he or she must make arrangements to ensure that the Client continues to receive advice either by another Duty Solicitor or as the Client's Own Solicitor. The Duty Solicitor may continue to act on an Own Solicitor basis if instructed to do so.

9.44 Subject to Paragraph **9.45** below, attendance is mandatory under Paragraph **9.43(c)** above. In all other Matters, when assessing whether attendance is necessary the Duty Solicitor must 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.

9.45 If exceptional circumstances exist which justify non-attendance at the Police Station, the Duty Solicitor must record his or her decision not to attend, including details of the exceptional circumstances and the reasons for the decision on the case file.

9.46 Before advice is given, the Client must be informed of the status of the Duty Solicitor or Representative.

9.47 Where required by local instructions, all staff undertaking Police Station Duty Solicitor work must carry an identification card as specified by us for production when attending Police Stations.

9.48 Cases referred by the DSCC to you whilst your nominated Duty Solicitor is on Rota duty must be accepted unless the nominated Duty Solicitor is already engaged with another Client at a Police Station or at a hearing of an application for a warrant of further detention or an extension of such a warrant or at an armed forces custody hearing or a conflict of interest arises.

9.49 If the Duty Solicitor is already at the Police Station when a Client requests the Duty Solicitor, he or she must inform the DSCC of this fact when a request for advice is accepted. If a conflict of interest arises the case must be referred back to the DSCC.

9.50 You must accept a Matter referred by the DSCC if the nominated Duty Solicitor is unavailable for one of the reasons set out in Paragraph **9.48** above but providing you have a Duty Solicitor available to accept the Matter without delay who is able to arrange attendance at the Police Station, if necessary, within 45 minutes.

9.51 You must use all reasonable endeavours to accept Panel and Back-up Matters referred by the DSCC.

9.52 With written prior approval from us you may use non-Duty Solicitor staff to receive calls from the DSCC, and such staff may accept a referral from the service provided that:

- (a) we are satisfied that the staff concerned have been effectively trained to undertake such a role; and
- (b) there are clear procedures in place for such staff to follow which ensure that referrals are not accepted unless there is an Accredited Representative available to make first contact with the Client immediately and which ensure that referrals are passed to such Representatives immediately; and
- (c) An Accredited Representative must be available to make first contact with the Client immediately and able to arrange attendance at the Police Station, if necessary, within 45 minutes.

### **Retaining Matters until the Investigation is concluded**

9.53 You must retain a Matter once it has been accepted and must, subject to the provisions below, continue to act for that Client until the end of the Investigation.

9.54 Duty Solicitor Matters, once accepted, may only be handed back to the DSCC before you have finished providing Police Station Telephone Advice or Police Station attendance in the following circumstances:

- (a) You are unable to continue to act personally and there is no other suitable person in your organisation able to act and you are unable to instruct a suitable Agent;
- (b) The Client removes or rescinds their instructions from your organisation;
- (c) Your organisation is unable to act because you have legitimate concerns about a breach of your professional code of conduct; or
- (d) You confirm that you will not claim a Police Station Advice and Assistance Fixed Fee or any other remuneration for the case.

9.55 Where a Matter is handed back to the DSCC, the reasons must be clearly recorded on the file.

### **Special Cases**

#### *Investigations by non-police agencies*

9.56 You may not claim for Police Station Advice and Assistance if you attend a Client making a voluntary attendance in connection with an investigation by an agency other than the police unless a Constable is present. If you provide Advice and Assistance to a Volunteer in circumstances where a Constable is not present, then you cannot claim for the work as Police Station Advice and Assistance. The Contract Work must be claimed as Advice and Assistance

under Paragraph **9.117 to 9.144** if the Client satisfies the relevant Qualifying Criteria.

9.57 An interview with a Volunteer may take place in a location other than a Police Station.

9.58 Where a Client is asked to attend an interview for questioning by a non-police body, regarding possible criminal charges, Advice and Assistance may be given under Paragraphs **9.117 to 9.144** if the Client satisfies the Qualifying Criteria. Any extension would depend upon factors such as the nature and complexity of the investigation, the distance to travel and the likely length of the interview.

### *Investigations by Services Police*

9.59 If the Client is a Services Person at a services establishment or elsewhere in the UK assisting with an investigation by the Services Police or suspected of a Serious Service Offence where:

(a) the investigation involves any offences which cannot be dealt with summarily;  
or

(b) the offence appears to the interviewing Services Police to be serious;

an Own Solicitor, Duty Solicitor or Accredited Representative may attend personally upon the Client where he or she considers that such attendance is necessary for the protection of the Client's interests.

9.60 If the Client is a Services Person requiring Advocacy Assistance within England and Wales at a custody hearing before a judicial officer under the Armed Forces Discipline Act 2000, an Own Solicitor, Duty Solicitor or Accredited Representative who is also a solicitor must attend personally upon the Client to provide Advice and Assistance including Advocacy Assistance.

9.61 This Unit of Work does not include any matter in connection with an investigation by Services Police where an attendance takes place outside England and Wales.

9.62 The services described in Paragraph **9.60** and **9.61** above may only be provided by a Client's Own Solicitor, a Duty Solicitor or an Accredited Representative (save that in the case of Paragraph **9.61**, an Accredited Representative must also be a Solicitor) where the Matter has been referred by the DSCC or accepted as a Duty Solicitor Matter at the services establishment.

### *Immigration Advice*

9.63 Subject to Paragraph **9.68** below, where you give Police Station Advice and Assistance and it is apparent, or becomes apparent, that an immigration issue arises, you must give Advice and Assistance to the Client up until the point where the immigration authorities take over conduct of the investigation and it has been confirmed that no criminal offence or charge is being pursued.

- 9.64 You may continue to advise after this point if the Client remains in detention and requires advice in relation to a criminal offence (which may include an Immigration Offence).
- 9.65 In relation to any non-criminal immigration issue unless the Client chooses to instruct his/her Own Solicitor, you must either:
- (a) refer the issue back to the DSCC (who will arrange for the provision of telephone advice by one of our civil Providers with a Contract to provide immigration advice to individuals detained at the Police Station); or
  - (b) consider whether it is practicable to refer the immigration issue to a Provider with a Contract in the immigration Category of Work in the local area (which may include your organisation).
- 9.66 Where the Client remains in detention and advice is required and it is not practicable to refer the Client to a Provider with a Contract in the immigration Category of Work, you may continue to provide Advice and Assistance. A full note of the relevant circumstances must be made on the file. The advice you may give includes any urgent advice required covering immigration status and procedure.
- 9.67 You must not give Police Station Advice and Assistance where: -
- (a) an individual is detained after entry and is served with illegal entry papers or a notice of intention to deport; or
  - (b) an individual is detained by the immigration authorities on entry; or
  - (c) an individual is arrested by police on behalf of the immigration authorities where no criminal allegations are made and is detained under the immigration authorities' administrative powers.
- 9.68 You must treat an investigation as taken over by the immigration authority once you have verified (by confirmation from the Police or Immigration Officer) that:
- (a) the immigration authorities will take over; and
  - (b) the police are not intending to interview until the immigration authorities take over; and
  - (c) there is no other criminal offence or other reason for detention; and
  - (d) the police have confirmed to you that they intend to do no more than simply hold the detainee until the arrival of the immigration authorities.
- 9.69 You must have a clear policy and procedure(s) for referral in accordance with **Section 2** of this Specification. We expect organisations to build links with immigration Providers and document details of appropriate Providers to which you will refer Clients.

## Previous Police Station Advice and Assistance

9.70 You must not make a Claim under this Contract for Police Station Advice and Assistance given to a Client who has received Police Station Advice and Assistance for the same Matter from another Provider within the six months preceding the application, except where:

- (a) there is a gap in time and circumstances have changed materially between the first and second or subsequent occasions when the Police Station Advice and Assistance was sought;
- (b) the Client has reasonable cause to transfer from the first Provider; or
- (c) the first Provider has confirmed to you that he or she will make no claim for payment for the Police Station Advice and Assistance.

9.71 You must make reasonable enquiries of your Client, before you provide Police Station Advice and Assistance to ascertain whether they have received previous Police Station Advice and Assistance in the same Case in the last six months, and record this on your file. If in doubt, you must assume that previous Advice and Assistance has been given and ensure that any work you carry out reflects the fact that some work may already have been done on the Matter to ensure that there is no element of repetition.

9.72 If a Client changes Solicitor within the same organisation or a Solicitor moves to work for a different Provider and continues to advise the Client, then there will not have been Police Station Advice and Assistance from 'another Provider' for the purposes of this Section of the Contract, but the second or subsequent Provider may not make a Claim for Police Station Advice and Assistance in addition to the first Provider. However, if the Client instructs another Provider and the same Solicitor does not continue to provide Police Station Advice and Assistance to the Client, this will be Advice and Assistance from 'another Provider'.

9.73 You must not provide and claim for Police Station Advice and Assistance under the terms of any of the exceptions contained at Paragraph **9.70** above where:

- (a) the Client simply disagrees with the first advice and wants a second opinion;
- (b) there is only a short time between the first and second occasions when the Police Station Advice and Assistance is sought and no material change of circumstances has occurred;
- (c) the change requested is from a second to a third Provider (unless exceptionally it is reasonable for a further change); or
- (d) there is no reasonable explanation for the Client seeking further Police Station Advice and Assistance from a new Provider.

- 9.74 Where Police Station Advice and Assistance is provided in contravention of the terms of this Section of the Contract, then the work undertaken must not be claimed or paid as Contract Work.
- 9.75 If the Client has received previous Advice and Assistance but you are permitted to provide further Police Station Advice and Assistance under Paragraph **9.70**, you must assign anew UFN and must make a note on the file to confirm that another Provider has given Police Station Advice and Assistance previously. In addition, the Client must complete a fresh application form and must meet the Qualifying Criteria. This rule applies equally where previous Advice and Assistance has been provided either by an Own Solicitor or a Duty Solicitor.
- 9.76 It is your responsibility to ascertain whether previous Police Station Advice and Assistance has been provided in the same Matter by making reasonable enquiries of your Client at the earliest opportunity. If the Client has received Police Station Advice and Assistance, and the circumstances at **9.73(a) to (c)** do not apply, you may either provide Police Station Advice and Assistance and not make a Claim for it, or should require the Client to contact the Provider who provided the original Police Station Advice and Assistance.

#### **Further instructions after a Matter ends or a Claim has been submitted**

- 9.77 Where you have claimed a Police Station Advice and Assistance Fixed Fee, you may not make any further Claim in the same Matter for Free Standing Advice and Assistance.
- 9.78 Where you have previously provided Advice and Assistance to a Client in relation to a Matter, and you have already claimed for the Matter in a Claim submitted to us in accordance with the terms of this Specification, then any further Advice and Assistance provided to the Client in relation to the same Matter must be the subject of a separate application. You must not claim a second Fixed Fee, but the original costs (as recorded) will be relevant in determining whether the Matter subsequently qualifies as an Exceptional Case and for the additional costs to be paid as such, in addition to the Fixed Fee or Exceptional Case costs already paid.
- 9.79 You must not provide Advice and Assistance in relation to a Matter where you have previously provided it unless there are substantive issues outstanding from the first occasion when Advice and Assistance was provided or there has been a material development or change in the Client's circumstances such that further Advice and Assistance is now required.

#### **Remuneration**

- 9.80 Where you provide Police Station Telephone Advice followed by Police Station attendance in the same Matter, you must not claim the Police Station Telephone Advice Fixed Fee in addition to the Police Station Attendance Fixed Fee.
- 9.81 The Police Station Attendance Fixed Fee covers any telephone advice followed by subsequent attendance. However, in such circumstances, you can

use both the Police Station Telephone Advice Fixed Fee and the Police Station Attendance Fixed Fee in your calculation for Exceptional Cases.

### **More than one Investigation**

- 9.82 If a Client is subject to an Investigation for which a Police Station Telephone Advice Fixed Fee is claimable and a further Investigation(s) in relation to an arrest or warrant for breach of bail is commenced at the same time, you may make only one Claim for Police Station Telephone Advice in relation to all Investigations.
- 9.83 If you represent a Client at the Police Station, and that Client is under investigation for a number of different offences, the starting point is that you may only claim one Police Station Attendance Fixed Fee for that Investigation. You may claim more than one Fixed Fee in circumstances where your Client has genuinely separate legal problems requiring separate advice. A file note should set out your justification for this.
- 9.84 If a Client is bailed to return to a Police Station, that is a continuation of the same Investigation.
- 9.85 If a Client is charged with an offence, and bailed to return to the Police Station to be investigated for another offence, the attendance on that return date entitles you to claim another Fixed Fee.
- 9.86 If you advise more than one Client during the course of a single Investigation, one Police Station Attendance Fixed Fee may be claimed for each Client whom you advise at the Police Station in that Investigation

### **Police Station Telephone Advice and calculating Exceptional Cases**

- 9.87 When you are assessing whether your Police Station Advice and Assistance work in a Matter should be paid as an Exceptional Case rather than by Fixed Fee you must include one Police Station Telephone Advice Fixed Fee in your calculation provided that the Matter is not a CDS Direct Matter and you have provided at least one telephone call with the Client during the Investigation.

### **Payment for Police Station Attendance Fixed Fees**

- 9.88 A Police Station Attendance Fixed Fee must be paid for all Police Station attendance undertaken on a Matter where a Solicitor or Accredited Representative attends a Client in the Police Station, unless that Matter qualifies as an Exceptional Case.
- 9.89 One Police Station Attendance Fixed Fee must be claimed for each Matter in respect of which you have provided Police Station attendance, irrespective of how many instances of Police Station Advice and Assistance (Police Station attendance and/or Police Station Telephone Advice) are given.
- 9.90 When a number of charges or Investigations arise out of one set of circumstances, then you must only claim one Police Station Attendance Fixed Fee.

- 9.91 When a number of Clients are subject to police Investigations in relation to the same set of circumstances, you must claim separate Police Station Attendance Fixed Fees in respect of each Client (but only provided you are able to act without conflict or breach of this Contract or your professional obligations).
- 9.92 If you are instructed by the DSCC to represent two or more Clients at the Police Station and it becomes apparent that you will not be able to act for both (or more) without being in conflict, you may only claim one Police Station Attendance Fixed Fee.
- 9.93 Where the Client raises several legal issues during a Police Station attendance, a single Fixed Fee must be claimed, even if they do not concern the same set of circumstances.
- 9.94 You must continue to record and report all profit costs, and the cost of waiting time to us when you make a Claim for Police Station attendance and you must use the correct Claim/stage reached codes notified to you in Guidance.
- 9.95 You must not make a separate claim for:
- (a) a Police Station Telephone Advice Fixed Fee; or
  - (b) a CDS Direct Fixed Acceptance Fee in addition to claiming a Police Station Attendance Fixed Fee or remuneration for an Exceptional Case (because these sums have already been included in the Police Station Attendance Fixed Fee).

The CDS Direct Fixed Acceptance Fee is only applicable when calculating whether a Matter is an Exceptional Case.

### **Police Station Fixed Fees – multiple investigations**

- 9.96 There are circumstances outlined in Guidance which allow you to claim Police Station Fixed Fees for multiple investigations.

### **CDS Direct Fixed Acceptance Fee**

- 9.97 Where a former CDS Direct Matter is referred to you for Police Station attendance, you must include one CDS Direct Fixed Acceptance Fee in your calculations for Exceptional Cases. The CDS Direct Fixed Acceptance Fee applies to any and all telephone calls you may undertake on the former CDS Direct Matter in the Criminal Investigations Class, and is applicable irrespective of the number or nature of calls made.

### **Payment for Police Station attendances - Exceptional Cases**

- 9.98 Where in any Matter the total value of Police Station attendance added to the value of any Police Station Telephone Advice Fixed Fee and CDS Direct Fixed Acceptance Fee is above the Exceptional Threshold you will be eligible for remuneration on an exceptional basis for that Matter as an “Exceptional Case”.

9.99 For each Scheme, there is an Exceptional Threshold level which is specified in the **Payment Annex**. If a Police Station attendance in a Matter, recorded at the Hourly Rates set out in the **Payment Annex** to this Specification, exceeds the applicable Exceptional Threshold, you may apply to claim all work above this threshold at the appropriate Hourly Rate.

9.100 Work up to the threshold level will attract the relevant Police Station Attendance Fixed Fee for that Scheme and this, together with the Hourly Rates you may make a Claim for, will constitute the Exceptional Case Fee.

### **Using Duty Solicitor rates in your calculation for Exceptional Cases**

9.101 You may use the Duty Solicitor rates set out in the **Payment Annex** in your calculation for Exceptional Cases only when a Duty Solicitor or Accredited Representative is acting as such in accordance with this Contract and the Claim relates to: -

- (a) attendances undertaken throughout a Duty Period; or
- (b) attendances that take place after acceptance of a Matter up until the point when the Client is released from the initial continuous period of custody.

Any subsequent Police Station Advice and Assistance provided by you on the same Matter outside the Duty Period must be calculated at the Own Solicitor rates which are set out in the **Payment Annex**.

### **Duty Solicitor serious offence rates**

9.102 You may use the Duty Solicitor serious offence rates in your calculation for Exceptional Cases 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), soliciting to murder (s.4 Offences Against the Persons Act 1861);
  - (iii) manslaughter (Homicide Act 1957 and common law);
  - (iv) causing death by dangerous driving (s.1 Road Traffic Act 1988);
  - (v) rape (s.1 Sexual Offences Act 2003);
  - (vi) assault by penetration (s.2 Sexual Offences Act 2003);
  - (vii) penetration of a child under 13 (s.5 Sexual Offences Act 2003);
  - (viii) assault of a child under 13 by penetration (Section 6 Sexual Offences Act 2003);
  - (ix) robbery (s. 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) Duty Solicitor rates would normally be payable;
- (c) the attendance is personally undertaken by a Duty Solicitor who is employed by, or a partner in, your organisation;
- (d) the attendance is undertaken during a Duty Period; and
- (e) the attendance takes place after acceptance of a Matter up until the point when the Client is released from the initial continuous period of custody.

9.103 You must not claim at the Duty Solicitor serious offence rate if you have had your Claims assessed at “category 3” (or equivalent) at the last Audit prior to the Police Station attendance unless either:

- (a) the time limit for appealing the Assessment has yet to expire; or
- (b) within that time limit, an appeal has been made but has not been finally determined.

## Rules on Claiming

9.104 Hotel expenses incurred by a Duty Solicitor whilst on a Police Station Duty Solicitor Rota are not recoverable unless prior authority is obtained from the Director in accordance with **Section 5** of this Specification. If prior authority is granted, hotel expenses actually and reasonably incurred may be claimed as a Disbursement by a Duty Solicitor whilst on a Police Station Duty Solicitor Rota.

9.105 The Duty Solicitor rates in the **Payment Annex** apply to work undertaken by an Accredited Representative deployed in accordance with the terms of this Specification. Advice and Assistance given by a Representative on your behalf must not be claimed under this Contract unless he or she is registered with the LSC and meets the requirements of this Specification and the LSC Police Station Register Arrangements when the advice is given.

9.106 In a Police Station Advice and Assistance Matter which is claimable as an Exceptional Case, we will not allow on Assessment any claim of more than 45 minutes travelling time (whether by you or an Accredited Representative).

9.107 A single Police Station Advice and Assistance Fixed Fee Claim on a Contract Report Form must be submitted for all work undertaken for a Client on the same

Matter. If you give Advice and Assistance or further Police Station Advice and Assistance on the same Matter, you must use the same UFN. This Paragraph should be read with Paragraph **9.139**.

9.108 A Claim must only be submitted when:

- (a) the Criminal Investigation has been concluded, either by way of the Client being charged or reported for summons, or the Matter has been disposed of in any other way; or
- (b) it is known that no further work will be undertaken for the Client in the same Matter; or
- (c) it is unclear whether further work will be required and a minimum of one month has elapsed since the last work in the Matter was undertaken. This provision will not apply where a Client has an outstanding bail back in the Matter, unless it is known that further work will not be undertaken on that occasion; or
- (d) post-charge work has been undertaken that is within the scope of this Unit of Work, and is not the subject of a claim under the Representations Unit of Work.

9.109 If post-charge work is claimed in this Class of Work where the Client is already represented on the same Matter or Case in the Criminal Proceedings Class of Work then the same UFN must be assigned as for the substantive proceedings. Any post-charge work done outside the Police Station must be undertaken and claimed in the Criminal Proceedings Class of Work.

9.110 Travel, waiting and attendance at the Police Station must be recorded for the purposes of determining whether a Matter qualifies as an Exceptional Case where post-charge work is undertaken within the scope of this Unit of Work but no post-charge telephone calls (whether routine, advice or fixed fee) must be claimed under the Criminal Investigations Class except where the Client is arrested for breach of bail conditions or on a warrant following failure to appear at the magistrates' or Crown Court.

9.111 If Police Station Advice and Assistance is claimed and you subsequently provide Advocacy Assistance to the same Client on the same Matter, then the same UFN must be assigned and the Advocacy Assistance work must be claimed at the appropriate rate separately from any claim for Police Station Advice and Assistance.

9.112 Where you have advised or assisted more than one Client in respect of the same Investigation, you must submit a separate Claim for a Police Station Advice and Assistance Fixed Fee for each Client using the Contract Report Form. You must apportion the time spent between each Claim and retain on file a breakdown of the total time spent and the work undertaken for each individual Client. You must assign a separate UFN to each Client in accordance with the rules in **Section 4** of this Specification and Guidance.

## **Payment for Police Station Telephone Advice**

9.113 Police Station Telephone Advice is paid as part of the Police Station Attendance Fixed Fee, except as outlined in Paragraph **9.116**.

9.114 You must not claim for Police Station Telephone Advice if CDS Direct have given telephone advice.

9.115 You may make a Claim for payment of a Police Station Telephone Advice Fixed Fee only in the following circumstances, where:

- (a) the Matter is not a CDS Direct Matter; and
- (b) you do not attend the Client at the Police Station and you make no Claim for Police Station Advice and Assistance Fixed Fee; and
- (c) you provide at least one telephone call with the Client during the Investigation; or
- (d) the circumstances set out at Paragraph **9.10(f)** apply.

9.116 You must not make more than one Claim for payment of Police Station Telephone Advice in each Investigation irrespective of the number of telephone calls to the Client, police or other parties in the course of the Investigation.

## **Work conducted outside the Police Station: Free standing Advice and Assistance (Own Solicitor)**

### **Scope**

9.117 You may provide Free Standing Advice and Assistance under this Unit of Work as Own Solicitor to a Client during a Criminal Investigation. You should note that an Upper Limit specified in the **Payment Annex** applies to work undertaken under this Unit of Work and operates as a Costs Limitation.

### **Qualifying Criteria**

9.118 The Sufficient Benefit Test set out in **Section 3** of this Specification must be satisfied in order to provide Free Standing Advice and Assistance.

9.119 Regulations impose a Financial Eligibility Test which must be satisfied in order to provide Free Standing Advice and Assistance. Documentary evidence as to the Client's means must be kept on your file.

### **Witnesses**

9.120 You may only provide Advice and Assistance to a witness if there is a complicating factor (as specified in Guidance).

### **Complaints of maltreatment by the Police**

9.121 These complaints must be dealt with as part of the general advice on the overall case. The only time a separate application for Advice and Assistance must be signed is where the nature of the complaint raises a serious and proper issue which cannot be dealt with within the context of the general criminal advice being given.

9.122 These cases must not be confused with claims against the police in relation to wrongful arrest, false imprisonment or malicious prosecution for which an application for funding must be made to the LSC as part of the CLS.

### **Case Starts and Ends**

#### **Application procedures**

9.123 The CDS1 and CDS2 application forms must be completed in accordance with **Section 4** of this Specification.

#### **Postal applications**

9.124 You may only exercise the Devolved Power to accept an application for Advice and Assistance by post from a Client where there is good reason to do so. You must note the good reason on your file.

## Telephone advice

9.125 You may Claim payment for advice given to a Client over the telephone before that Client has signed the application form only where:

- (a) the Client cannot for good reason attend your Office; and
- (b) the Client meets the Qualifying Criteria for the provision of Advice and Assistance (including the Financial Eligibility Test); and
- (c) the Client has subsequently signed the application form.

## Outward Travel

9.126 You may Claim for the mileage or actual cost of public transport for travel but not travelling time, except as allowed below to visit a Client away from your Office before the application form is signed, where:

- (a) the visit is justified for good reason (and you note that good reason on your file); and
- (b) the Client meets the Qualifying Criteria for this Unit of Work and has subsequently signed the application form.

9.127 Where you are visiting the Client in detention, prison or hospital then you may also claim the travelling time at the appropriate rate. The provisions of Paragraphs **9.126(a)** and **(b)** above will need to be satisfied before any Claim is made.

9.128 Costs must be reasonably incurred taking account of all the circumstances including, for example, the distances involved as against the availability of advice from a more local contractor and the justification for travelling to attend on the Client at all, bearing in mind that telephone advice can be given and applications accepted by post.

## Previous Advice and Assistance

9.129 You may not make a Claim for Advice and Assistance given to a Client who has received Advice and Assistance for the same Matter from another Provider within the six months preceding the application, except where:

- (a) there is a gap in time and circumstances have changed materially between the first and second occasions when the Advice and Assistance was sought, for example, a Client has been charged or convicted in the intervening period; or
- (b) the Client has reasonable cause to transfer from the first Provider e.g. conflict of interest; or
- (c) the first Provider has confirmed to you that he or she will be making no Claim for payment for the Advice and Assistance; or
- (d) Advice and Assistance was originally given at a Police Station.

When providing Advice and Assistance in the circumstances set out in this Paragraph you must record the justification for doing so on the file. For the avoidance of doubt, this is a Devolved Power.

- 9.130 If a Client changes Solicitor within the same organisation or a Solicitor moves to work for a different Provider and continues to advise the Client, then there will not have been Advice and Assistance from ‘another Provider’ for the purposes of Paragraph **9.129** but the second or subsequent Provider may not Claim for Advice and Assistance in addition to the first Provider. However, if the Client instructs another Provider and the same Solicitor does not continue to provide Advice and Assistance to the Client, this will be Advice and Assistance from ‘another Provider’.
- 9.131 You cannot Claim for Advice and Assistance under the terms of any of the exceptions contained in Paragraphs **9.129(a) to (d)** above where:
- (a) The Client simply disagrees with the first advice and wants a second opinion;
  - (b) There is only a short time between the first and second occasions when the Advice and Assistance is sought and no material change of circumstances has occurred;
  - (c) The change requested is from a second to a third Provider (unless exceptionally it is reasonable for a further change);or
  - (d) There is no reasonable explanation for the Client seeking further Advice and Assistance from a new Provider.
- 9.132 Where Advice and Assistance is provided in contravention of the terms of Paragraph **9.129**, then the work undertaken must not be claimed or paid as Contract work.
- 9.133 If the Client has received previous Advice and Assistance but you provide further Advice and Assistance under Paragraph **9.129**, you must assign a new UFN and must make a note on the file to confirm that Advice and Assistance has been given previously by another Provider. In addition, the Client must complete a fresh application form and must meet the Qualifying Criteria.
- 9.134 You must ascertain whether previous Advice and Assistance has been provided in the same Matter by making reasonable enquiries of your Client at the earliest opportunity. If the Client has received Advice and Assistance, and the circumstances at **9.129(a) to (d)** do not apply, you must either provide Advice and Assistance and not make a Claim for it, or require the Client to contact the Provider who provided the original Advice and Assistance.
- 9.135 If you provide Advice and Assistance where previous Advice and Assistance has been given for the same Matter then any work undertaken by the previous Solicitor will not count for the purposes of the upper limit applicable for this Unit of Work.

## **Further instructions after a Matter ends or a Claim has been submitted**

9.136 Where you have previously provided Advice and Assistance to a Client in relation to a Matter, and you have already claimed for the Matter in a Claim submitted to us in accordance with the terms of this Specification, then any further Advice and Assistance provided to the Client in relation to the same Matter must be the subject of a separate application. The original Upper Limit (as extended) will continue to apply, where relevant.

9.137 It will not be reasonable to provide Advice and Assistance in relation to a Matter where you have previously provided it unless there are substantive issues outstanding from the first occasion when Advice and Assistance was provided or there has been a material development or change in the Client's circumstances such that further Advice and Assistance is required.

9.138 If you provide further Advice and Assistance under Paragraph **9.136** then:

- (a) the Client must complete a further application form and you must establish that any Qualifying Criteria are met, where relevant;
- (b) your file must make reference to any previous closed file and the files must be kept together for Audit purposes;
- (c) you must assign a new UFN to the new Matter; and
- (d) you may need to consider an extension to the upper limit where appropriate, unless the previous limit was not exhausted.

## **Rules on claiming**

9.139 If you provide Free Standing Advice and Assistance where you have attended a Police Station in accordance with the Police Station Advice and Assistance Unit of Work, you must not make a separate Claim other than for the Police Station Attendance Fixed Fee for that work. A single Claim must be submitted for all Advice and Assistance work undertaken in the Criminal Investigations Class of Work for a Client in the same Matter irrespective of the number of attendances or occasions on which advice is given, except where a Claim has been submitted already for the same Matter because Paragraph **9.140(c)** or **(d)** apply.

9.140 A Claim must be submitted when:

- (a) the Investigation has been concluded, either by way of the Client being charged or reported for summons, or the Matter has been disposed of in any other way; or
- (b) it is known that no further work will be undertaken for the Client in the same Matter; or
- (c) it is unclear whether further work will be required and a minimum of one month has elapsed since the last work in the Matter was undertaken. This provision will not apply where a Client has an outstanding bail back in the

Matter, unless it is known that further work will not be undertaken on that occasion; or

(d) post charge work at the Police Station has been undertaken that is within the scope of this Unit of Work.

9.141 Where you have advised or assisted more than one Client in respect of the same Investigation, you must submit a separate Claim for each Client using the Contract Report Form. You must apportion the time spent between each Claim and retain on file a breakdown of the total time spent and the work undertaken for each individual Client. You must assign a separate UFN to each Client in accordance with this Specification and Guidance.

9.142 If Free Standing Advice and Assistance is claimed and you subsequently provide Advocacy Assistance to the same Client on the same Matter, then the same UFN must be assigned but the Advocacy Assistance work must be claimed at the appropriate rate and separately from any claim for Advice and Assistance.

### **Limits on Claims**

9.143 Subject to any extensions to the Upper Limit granted following an application made under Paragraphs **5.09 to 5.20** of this Specification, the Upper Limit specified in the **Payment Annex** applies to Claims.

### **Payment**

9.144 You must claim for work undertaken in this Unit of Work at the Hourly Rates as set out in the **Payment Annex**.

## **Work conducted outside the Police Station: Advocacy Assistance on a warrant of further detention**

### **Scope**

9.145 You may only provide Advocacy Assistance under this Unit of Work as Own Solicitor or Police Station Duty Solicitor to a Client who during a Criminal Investigation is the subject of an application for a warrant of further detention in a magistrates' court or the High Court, before a judicial authority or a senior judge in connection with an application for a warrant of further detention, or for an extension of such a warrant, under sections 43 or 44 of PACE or paragraphs 29 or 36 of Schedule 8 of the Terrorism Act 2000. You should note that an Upper Limit specified in the **Payment Annex** applies to work undertaken under this Unit of Work and operates as a Costs Limitation.

### **Qualifying Criteria**

9.146 The Sufficient Benefit Test is deemed to be satisfied if you are instructed by a Client who is the subject of an application for a warrant of further detention.

9.147 There is no Financial Eligibility Test under this Unit of Work.

### **Application Procedures**

9.148 Advocacy Assistance under this Unit of Work may be granted without an application form provided that a note of the grant (in accordance with Paragraph **9.150**) is made on the file either before the Advocacy Assistance is to be provided or, if provided at short notice, as soon as practicable thereafter. The grant must be made by a qualified Solicitor who is a Designated Fee Earner, or a crime Supervisor.

9.149 You may grant Advocacy Assistance under this Unit of Work only where the Matter falls within the scope of this Unit of Work.

9.150 You must record the following on file:

- (a) The Client's name and address;
- (b) The UFN;
- (c) The date, time and venue of the court appearance; and
- (d) Details of the relevant Unit of Work and confirmation that the Matter falls within any limitations on scope.

### **Preparation and follow up work**

9.151 The scope of Advocacy Assistance under this Unit of Work includes any reasonable preparation and follow up work.

## **Counsel**

9.152 You may instruct Counsel in relation to this Unit of Work if the application is before the High Court or a senior judge. You are expected to undertake the advocacy on a warrant of further detention hearing which is before a magistrates' court or judicial authority.

## **Rules on claiming**

9.153 A single Claim must be submitted for all Advocacy Assistance undertaken under this Unit of Work for a Client in the same Matter irrespective of the number of attendances or occasions on which advice is given, or the Units of Work included in the Claim.

9.154 A Claim must be submitted when:

- (a) the Investigation has been concluded, either by way of the Client being charged or reported for summons, or the Matter has been disposed of in any other way; or
- (b) it is known that no further work will be undertaken for the Client in the same Matter.

## **Limit on Claims**

9.155 Subject to any extensions to the Upper Limit granted following an application made under Paragraphs **5.09 to 5.20** of this Specification, the Upper Limit specified in the **Payment Annex** applies to Claims.

## **Payment**

9.156 You must Claim for work carried out under this Unit of Work before a magistrates' court or judicial authority at the rates specified in the **Payment Annex**.

9.157 You must Claim for work carried out under this Unit of Work before the High Court or a senior judge at the rates specified in the **Payment Annex**.

## **Work conducted outside the Police Station: Advocacy Assistance for armed forces custody hearings**

### **Scope**

9.158 You may provide Advocacy Assistance under this Unit of Work only as Own Solicitor or Police Station Duty Solicitor to a Client during a Criminal Investigation who is the subject of an application to extend detention in military custody. You should note that an Upper Limit specified in the **Payment Annex** applies to work undertaken under this Unit of Work and operates as a Costs Limitation.

9.159 This Unit of Work does not include any matter in connection with an investigation by Services Police where an attendance takes place outside England and Wales.

### **Qualifying Criteria**

9.160 The Sufficient Benefit Test is deemed to be satisfied if you are instructed by a client who is the subject of an application to extend detention in military custody.

9.161 There is no Financial Eligibility Test under this Unit of Work.

### **Application procedures**

9.162 Advocacy Assistance under this Unit of Work may be granted without an application form provided that a note of the grant (in accordance with Paragraph **9.163** below) is made on the file either before the Advocacy Assistance is to be provided or, if provided at short notice, as soon as practicable thereafter. The grant must be made by a qualified Solicitor who is a Designated Fee Earner, or a crime Supervisor under this Contract.

9.163 You must record the following on file:

- (a) The Client's name and address;
- (b) The UFN;
- (c) The date, time and venue of the hearing; and
- (d) Details of the relevant Unit of Work and confirmation that the Matter falls within any limitations on scope.

### **Preparation and follow up work**

9.164 The scope of Advocacy Assistance under this Unit of Work only includes the giving of any advice on appeal.

### **Counsel**

9.165 You must not instruct Counsel in relation to this Unit of Work.

## Rules on claiming

9.166 A single Claim must be submitted for all Advocacy Assistance undertaken under this Unit of Work for a Client in the same Matter irrespective of the number of attendances or occasions on which advice is given, or the Units of Work included in the Claim, except where a Claim has been submitted already for the same Matter because Paragraph **9.167(c)** applies.

9.167 A Claim must be submitted when:

- (a) All work in connection with the Armed Force Custody Hearing has been concluded, either by way of the Client being charged or reported for summons, or the Matter has been disposed of in any other way; or
- (b) it is known that no further work will be undertaken for the Client in the same Matter; or
- (c) it is unclear whether further work will be required and a minimum of one month has elapsed since the last work in the Matter was undertaken.

9.168 If Advocacy Assistance is claimed in this Class where the Client has already received Police Station Advice and Assistance or Free Standing Advice and Assistance on the same Matter, then the same UFN must be assigned and the work must be claimed at the appropriate rate separately from any claim for Advice and Assistance.

## Limit on Claims

9.169 Subject to any extensions to the Upper Limit granted following an application made under Paragraphs **5.09 to 5.20** of this Specification, the Upper Limit specified in the **Payment Annex** applies to Claims.

## Payment

9.170 You must claim for work carried out under this Unit of Work at the rates specified in the **Payment Annex**.

## **Work conducted outside the Police Station: Advocacy Assistance in the magistrates' court in connection with an application to vary police bail conditions**

### **Scope**

- 9.171 You may provide Advocacy Assistance under this Unit of Work only as Own Solicitor or having represented the Client as Police Station Duty Solicitor during the Criminal Investigation of a Matter. This Unit of Work relates to an application to vary police bail conditions (including “street bail” conditions) imposed by the police under sections 30BC or 47(1E) of PACE, as amended by the Criminal Justice Act 2003. You should note that an Upper Limit specified in the **Payment Annex** applies to work undertaken under this Unit of Work and operates as a Costs Limitation.
- 9.172 You may not provide Advocacy Assistance under this Unit of Work if you are acting as Court Duty Solicitor. Instead, you should claim for the work part of your Duty Solicitor Work under Paragraphs **10.1 to 10.19**.

### **Qualifying Criteria**

- 9.173 There are no Qualifying Criteria for you to comply with but you must check that the Matter falls within the scope of this Unit of Work.

### **Application procedures**

- 9.174 Advocacy Assistance under this Unit of Work may be granted without an application form provided that a note of the grant (in accordance with Paragraph **9.175**) is made on the file either before the Advocacy Assistance is to be provided or, if provided at short notice, as soon as practicable thereafter. The grant must be made by a qualified Solicitor who is a Designated Fee Earner, or the crime Supervisor.
- 9.175 You must record the following on file:
- (a) The Client's name and address;
  - (b) The UFN;
  - (c) The date, time and venue of the court appearance; and
  - (d) Details of the relevant Unit of Work and confirmation that the Matter falls within any limitations on scope.

### **Preparation and follow up work**

- 9.176 The scope of Advocacy Assistance under this Unit of Work only includes any reasonable preparation and giving of any advice on an appeal.

### **Counsel**

- 9.177 You may not instruct Counsel in relation to this Unit of Work.

## Rules on Claiming

9.178 A single Claim must be submitted for all Advocacy Assistance undertaken under this Unit of Work for a Client in the same Matter irrespective of the number of attendances or occasions on which advice is given, or the Units of Work included in the Claim, except where a Claim has been submitted already for the same Matter because Paragraph **9.179(c)** applies.

9.179 A Claim must be submitted when:

- (a) the Criminal Investigation has been concluded, either by way of the Client being charged or reported for summons, or the Matter has been disposed of in any other way; or
- (b) it is known that no further work will be undertaken for the Client in the same Matter; or
- (c) it is unclear whether further work will be required and a minimum of one month has elapsed since the last work in the Matter was undertaken.

9.180 If Advocacy Assistance is claimed in this Class where the Client has already received Police Station Advice and Assistance or Free Standing Advice and Assistance on the same Matter, then the same UFN must be assigned and the work must be claimed at the appropriate rate separately from any claim for Advice and Assistance.

## Limit on Claims

9.181 Subject to any extensions to the Upper Limit granted following an application made under Paragraphs **5.09 to 5.20** of this Specification, the Upper Limit specified in the **Payment Annex** applies to Claims.

## Payment

9.182 You must claim for work carried out under this Unit of Work at the rates which apply to Advocacy Assistance in a magistrates' court (other than by a court Duty Solicitor acting as such which should be claimed under Paragraph **10.1**) which are specified in the **Payment Annex**.

## **10 CRIMINAL PROCEEDINGS**

### **Advice and Assistance and Advocacy Assistance by a court Duty Solicitor**

#### **Scope**

10.1 This Unit of Work may only be undertaken by you for a Client who is involved in Criminal Proceedings or is the subject of police bail.

#### **Qualifying Criteria**

10.2 The Sufficient Benefit Test must be satisfied in order to provide Advice and Assistance or Advocacy Assistance under this Unit of Work.

#### **Application procedures**

10.3 A court Duty Solicitor must check that the Case falls within the scope of service of court Duty Solicitor work before accepting instructions to act.

10.4 Advocacy Assistance and/or Advice and Assistance under this Unit of Work may be granted by the court Duty Solicitor without an application form provided that a note of the grant (in accordance with Paragraph **10.6**) is made on the file either before the Advocacy Assistance or Advice and Assistance is to be provided or, if provided at short notice, as soon as practicable thereafter.

10.5 You may grant Advocacy Assistance or Advice and Assistance under this Unit of Work only where the Case falls within the scope of this Unit of Work and any other limitations on scope are satisfied.

10.6 You must record the following on file:

- (a) The Client's name and address;
- (b) Details of the relevant Unit of Work;
- (c) Whether the Client is in custody or charged with an imprisonable offence;  
and
- (d) The date, time and venue of the court appearance.

#### **Service requirements**

10.7 A Duty Solicitor at a magistrates' court must provide the following services to any defendant who wishes to receive Advocacy Assistance:

- (a) advice to an individual who is in custody; and
- (b) the making of a bail application unless the individual has received such assistance on a previous occasion;
- (c) advice to an individual who is involved in Prescribed Proceedings.

10.8 The Duty Solicitor may, subject to Paragraph **10.9**, also provide:

- (a) Advice and Assistance and/or Advocacy Assistance to a Client who is in custody on a plea of guilty where the Client wishes the Case to be concluded at that appearance in court, unless the Duty Solicitor considers that the Case should be adjourned in the Interests of Justice of the Client;
- (b) where necessary, Advice and Assistance and/or Advocacy Assistance to a Client who is before the court as a result of failure to pay a fine or other sum ordered or to obey an order of the court, and such failure may lead to the Client being at risk of imprisonment;
- (c) Advice and Assistance and, where appropriate, Advocacy Assistance to any other Client who is not in custody provided it is in connection with an imprisonable offence where, in the opinion of the Duty Solicitor, such a Client requires Advice and Assistance and/or Advocacy Assistance;
- (d) help to a Client who is eligible for assistance from the court Duty Solicitor to make an application for a Representation Order in respect of any subsequent appearance of the Client before the court. Where such an application is made the Duty Solicitor must enquire whether the Client wishes to instruct another Solicitor to act for him or her. If the Client does so wish, the Duty Solicitor must insert the name of that Solicitor in the application form;
- (e) Advice and Assistance and, where appropriate, Advocacy Assistance to a Client in circumstances described in Paragraph **10.7** above; or
- (f) Advice and Assistance and, where appropriate, Advocacy Assistance to an individual to apply to vary police bail conditions (including “street bail” conditions) imposed by the police under sections 30BC or 47(1E) of PACE, as amended by the Criminal Justice Act 2003.

10.9A Duty Solicitor must not provide Advocacy Assistance in committal proceedings or at a not guilty trial, nor, subject to Paragraph **10.8 (e)** and **(f)** above, Advice and Assistance and/or Advocacy Assistance to a Client in connection with a non-imprisonable offence.

10.10 When a hearing is adjourned to another day, a Duty Solicitor must not, as Duty Solicitor, provide Advice and Assistance or Advocacy Assistance to a defendant to whom he or she or any other Duty Solicitor has provided services in the same Case. This Paragraph does not prevent a Duty Solicitor from representing the same Client again if that Client’s Case is adjourned to a later time that same day.

10.11 A court Duty Solicitor must not advise or represent any Client at a sitting when that Duty Solicitor or any member of his or her organisation is representing the Crown Prosecution Service in the same court building.

10.12 A court Duty Solicitor must remain at the court during the Duty Period until it is clear to him or her that Advice and Assistance or Advocacy Assistance is not likely to be required by any defendant. Where it is not clear whether such help is needed, he or she must consult the clerk of the court or other suitable person.

10.13 A court Duty Solicitor must wear an identification badge during his or her Duty Period at court where required to do so by the magistrates' court or local instructions.

10.14 An application for a Representation Order must not be made by you (or anyone working under your Contract) for any Case that concludes on the same day as the court Duty Solicitor session where you have acted as court Duty Solicitor on that Case. Such work must be claimed at the court Duty Solicitor rates set out in the **Payment Annex** unless the Case was not within the scope of this Unit of Work.

10.15 You must comply with **Section 6** of this Specification.

### **Preparation and follow up work**

10.16 The scope of Advocacy Assistance under this Unit of Work, which you must comply with, only includes:

- (a) the giving of any notice of any appeal or making an application to the magistrates' for them to state a case within the ordinary time limit and matters preliminary to that; and
- (b) any reasonable preparation and follow up work (this may include advising before the hearing (including reasonable preparation and attendance in the Office, correspondence and telephone calls) and advising the Client of the consequences of the outcome)

except that reasonable advice and preparation must only be remunerated when provided during the court duty session.

### **Rules on claiming**

10.17 Where Advice and Assistance and/or Advocacy Assistance is provided by the court Duty Solicitor acting as such under this Class of Work, all work undertaken during the court Duty Period must be submitted in a single Claim at the court Duty Solicitor rates set out in the **Payment Annex**.

10.18 Such a Claim must be submitted separately from a Claim made in this Class for additional work undertaken on the same Matter or Case for the same Client outside of the court Duty Period.

### **Payment**

10.19 You must claim for Advocacy Assistance and/or Advice and Assistance provided under this Unit of Work at the rates specified in the **Payment Annex**.

## **Advocacy Assistance at the Virtual Court**

### **Scope**

10.20 This Unit of Work may only be undertaken for a Client during Criminal Proceedings at the Virtual Court.

10.21 You may represent the Client at the Police Station or at the court building.

### **Qualifying Criteria**

10.22 The Sufficient Benefit Test is deemed to be satisfied if the Police have decided that a Case is suitable to be dealt with in the Virtual Court.

10.23 There is no Financial Eligibility Test for this Unit of Work,

### **Application procedures**

10.24 You may grant Advocacy Assistance under this Unit of Work only where the Case falls within the scope of this Unit of Work.

10.25 You must record the following on file:

- (a) the Client's name and address;
- (b) the date, time and venue of the Virtual Court appearance; and
- (c) details of the relevant Unit of Work.

### **Preparation and follow up work**

10.26 The scope of Advocacy Assistance under this Unit of Work only includes:

- (a) reasonable preparation;
- (b) all telephone calls;
- (c) advising the Client of the consequences of the outcome; and
- (d) completion of any subsequent application for a Representation Order.

### **Rules on claiming**

10.27 You may claim for Virtual Court work provided under this Unit of Work only if:

- (a) The case is disposed of at the Virtual Court hearing (or a subsequent hearing on the same day where the case is adjourned for pre-sentence reports);
- (b) The case is adjourned to a second hearing and the defendant fails the means test or does not meet the Interests of Justice Test;
- (c) You decide not to represent the Client further and no application for a Representation Order is made;

(d) You attend the Client, and advise the Client not to participate in the Virtual Court Scheme, and do not subsequently represent the Client at a second hearing (whether because the Client fails the means test, does not meet the Interests of Justice Test, or declines to instruct you further).

10.28 If the Case is not disposed of at the Virtual Court, and you go on to represent the Client under a Representation Order, then the Virtual Court Appearance Fee must not be claimed. The work undertaken on the Virtual Court hearing can be included in the calculation of the core hours to determine the final value of the Standard Fee.

10.29 If the Client already has a Representation Order and the Virtual Court hearing concerns a breach of bail or arrest on a warrant in connection with the same Case that the Representation Order has been granted for, no separate Virtual Court appearance fee is claimable.

10.30 A Duty Solicitor may not represent a Client at a Virtual Court hearing who already has a Representation Order granted on the same matter.

### **Payment – Virtual Court appearance fee**

10.31 Except where paragraphs **10.28** and **10.29** apply, you must claim for work carried out under this Unit of Work at the Fixed Fees which apply to Virtual Court Advocacy Assistance and which are specified in the **Payment Annex**.

10.32 Unless expressly authorised in this Contract, you must not Claim any other amount for work carried out in connection with a Virtual Court hearing.

### **Additional service requirements**

10.33 If you accept a call to attend a Virtual Court hearing (whether as Duty Solicitor or as the Client's Own Solicitor), you must attend the relevant Police Station (or magistrates' court) at a reasonable time before the Virtual Court hearing time.

10.34 If you are a member of a Virtual Court Duty Solicitor Scheme, you must ensure that your Duty Solicitors accept a minimum of 90% of the calls you receive to attend a Virtual Court hearing. If you meet this requirement, we may remove you from the Scheme unless you provide reasons for your failure which are reasonably satisfactory to us. You may ask us to re-consider our decision on this under **Clause 27** of the Standard Terms.

## **Representation in the magistrates' court**

### **Scope**

10.35 This Unit of Work covers representation in a magistrates' court in criminal proceedings (including Prescribed Proceedings) under a Representation Order and includes:

- (a) Advice on an appeal
- (b) Related bail proceedings in the Crown Court or High Court.

It excludes proceedings that are sent for trial under section 51 of the Crime and Disorder Act 1998 (except proceedings in a magistrates' court following a remittal under paragraphs 10(3)(a) or 13(2) of Schedule 3 to the Crime and Disorder Act 1998).

### **Qualifying Criteria**

10.36 In order for you to provide Representation under this Unit of Work:

- (a) the Client must satisfy the Financial Eligibility Test. The Client's eligibility will be assessed by the Representation Authority; and
- (b) the Client must have been granted a Representation Order by the Representation Authority.

### **Application procedures**

10.37 You may not claim for Representation unless a Representation Order has been granted by a Representation Authority following the appropriate application procedure.

10.38 Where a Representation Order is granted and the Client needs assistance with completing the relevant forms, you may only spend up to 30 minutes providing such assistance. This item of work may then be included in your calculation of costs to determine the appropriate Standard Fee, or to be assessed if the case is claimed as a non-Standard Fee.

### **Pre-Order work**

10.39 A Claim for work under this Unit of Work covers all work undertaken from the date on which the Representation Order is granted. It also covers any legal advice or representation given on the same Case before an Order is granted if the following three conditions are met:

- (a) the interests of justice require that the advice or representation is provided as a matter of urgency i.e., there is a court hearing within ten working days or less of the date when initial instructions are taken;
- (b) there is no undue delay in making an application for Representation which must be submitted no more than five working days after initial instruction; and

(c) the Pre-Order advice or Representation is given by you and you are subsequently assigned under the Representation Order.

10.40 If you provide Representation under this Unit of Work, then any Claim must include any Pre-Order work. Where a Standard Fee is payable, it will apply to all the work required to be included in the same Claim.

10.41 In order to enable us to decide whether Pre-Order work may be claimed and/or allowed, you must note on file the date of initial instruction; the date the application for a Representation Order was lodged with the court and the date of the court hearing.

## **Counsel**

10.42 If you instruct Counsel, the instructions delivered must include a copy of the Representation Order and you must notify Counsel of the UFN, and any amendments made to the Representation Order.

## **Assigned Counsel**

10.43 Where Counsel is assigned under a Representation Order in accordance with regulation 12 of the CDS (General) (No.2) Regulations 2001 (as amended), Assigned Counsel must be paid directly by us in accordance with the rates set out in the **Payment Annex** and must complete a separate Claim form.

10.44 You must provide Assigned Counsel with details of the UFN which must be inserted on Counsel's Claim. You must submit Counsel's Claim at the same time that you submit your Claim. The time limits for claims in **Part A** of this Specification apply to Counsel's Claim.

## **Unassigned Counsel**

10.45 You may instruct Counsel on an unassigned basis to provide magistrates' court Representation where a Representation Order has been granted. If you do this, you must agree a fee with Counsel in writing and notify Counsel of the relevant UFN.

10.46 In proceedings for which a Standard Fee is claimed, Counsel's agreed fee must also include any fees agreed between you and Counsel in respect of Counsel's travelling and waiting time and travelling costs. Counsel's travelling and waiting costs cannot be claimed separately from us.

10.47 You must Claim your costs (including the time spent by Counsel in preparation, attendance and advocacy) on the Contract Report Form as a Standard Fee (unless the Case is claimable as a non-Standard Fee Claim). When working out the appropriate Standard Fee, the calculation must be made on the basis that the case was conducted without Counsel. You must use the rates set out in the **Payment Annex** of this Specification applicable for this Unit of Work to determine the correct level of Standard Fee and you must retain on file details of the amount agreed in respect of Unassigned Counsel's fees (if Unassigned Counsel is instructed).

10.48 A Non-Standard Fee Claim will be assessed or audited using the maximum fee principle, on the basis that you conducted the Case without Counsel.

- 10.49 You must pay Unassigned Counsel's fees. You must agree a fee with Counsel and to make appropriate arrangements for Counsel to be paid in accordance with the Contract. We have no liability to pay Counsel who is instructed on an Unassigned basis.
- 10.50 The costs payable in respect of Counsel's agreed fee will only be reduced on Assessment on Non-Standard Fees where, and to the extent that, they exceed the costs that would be allowed if you had conducted the case without Counsel.
- 10.51 The professional relationship between you and Counsel will be the same as in a privately funded case.
- 10.52 If more than one Counsel is instructed in the same proceedings, you must reach a separate agreement with each Counsel on fee and payment arrangements.
- 10.53 If you fail to pay Unassigned Counsel within 30 days of receipt of his or her fee note, then Unassigned Counsel may apply to us to be paid directly. We will make enquiries directly with you to establish whether any payment has been or will be made. You must provide us with the relevant UFN and written confirmation of the fee agreed, together with Unassigned Counsel's fee note.
- 10.54 If we are satisfied that Unassigned Counsel has not been paid and agree to pay Unassigned Counsel directly, we will recoup the relevant amount from subsequent payments to you. We will only use this power as a remedy where you have not shown any justified reason for non-payment.

### **Withdrawal of a Representation Order**

- 10.55 You may claim for work undertaken up until the date of withdrawal of a Representation Order.
- 10.56 The time limit for submission of a Claim runs from the date on which withdrawal of an Order came to your knowledge.
- 10.57 Where a Representation Order is withdrawn, you must send without delay all papers and other material in your possession relating to the proceedings to the Client, but retain copies on file for Assessment purposes.

### **Rules on claiming**

- 10.58 Subject to the provisions in relation to claiming below, a single Claim must be submitted for all work undertaken in the Criminal Proceedings Class of Work for a Client in the same Case except where a Claim has been submitted already in the same Case because Paragraph **10.61** below applies. The single Claim must be for one or more of the Units of Work within the Criminal Proceedings Class of Work. Where a Standard Fee is payable, it will apply to all the work required to be included in the same Claim.
- 10.59 A single Claim must be submitted in respect of all Clients where a Claim is made under this Unit of Work for Representation provided to two or more Clients in the same Case.

- 10.60 A single Claim must be submitted where more than one Case is joined.
- 10.61 Subject to Paragraphs **10.59 to 10.60**, a Claim may only be submitted when:
- (a) the Case has concluded; or
  - (b) it is known that no further work will be undertaken for the Client in the same Case; or
  - (c) it is unclear whether further work will be required or not and a minimum of one month has elapsed since the last work in the Case was undertaken.
- 10.62 Once a Representation Order has been granted, any Pre-Order work given to the Client on issues which form part of the Case covered by the Representation Order must be claimed under the Representation Order.
- 10.63 Where you act for more than one Client in Criminal Proceedings which form a single Case, your Claim for payment must cover all Clients represented. Where you undertake work for more than one Client on the same Case, you must assign the same UFN to each Client for claiming purposes. The work undertaken will form a single Claim to which you must assign the UFN of the “lead” Client in accordance with Guidance. You must retain on file a breakdown of the time spent with each Client which may be requested by us for Assessment or Audit purposes. This information must be submitted as part of your Claim in a Non-Standard Fee Case.
- 10.64 You must submit each Client’s Representation Order with your Claim.
- 10.65 Where sentence is deferred in the magistrates’ court, a Claim must be submitted within three months of the date of deferment. A separate Claim may be made for work done only following the deferment. This must be submitted within three months of the Client’s reappearance for sentence and must be claimed as a category 1 (summary only) or category 1 (either way) Standard Fee as appropriate to the offence.
- 10.66 Where proceedings in a magistrates’ court have not been concluded but a warrant of arrest has been issued, a Claim for costs in respect of work done under a Representation Order must be made not earlier than six weeks and not later than 19 weeks from the date of issue of the warrant. A supplemental Claim may be made for any further work undertaken after the original Claim has been submitted if the Client is arrested or surrenders. The original Claim will then be recalculated.
- 10.67 In Criminal Proceedings in the magistrates’ court covered by a Representation Order, a Standard Fee will be paid to you in accordance with the Contract for a Case in accordance with the payment rates set out in the **Payment Annex**.
- 10.68 Where the proceedings involve more than one offence, the definition of Case consists of three independent elements or tests. One or more of the following three tests will need to be satisfied to determine whether a Claim for a single Standard Fee, or a whether two or more Standard Fees may be claimed. If the answer to any of one of these tests is “yes”, then only one Standard Fee may be claimed:

- (a) Are the charges or informations preferred or laid at the same time?
- (b) Are the charges or informations founded on the same facts? The test here is whether the charges have a common factual origin.
- (c) Are the charges or informations part of a series of offences? The test here is whether the offences exhibit some similar feature which would allow them to be described as a series of offences.

10.69 For the purposes of the definition of a series of offences, a breach of a community penalty or other court order must be treated as an offence. If the defendant is before the court for other reasons, then no separate Standard Fee payment will be made for breach proceedings, irrespective of whether there is any link between the breach proceedings and any other proceedings being heard at the same time. If breach proceedings are heard alone then they will attract a separate Standard Fee.

10.70 We will not pay you for any work done in relation to a defendant who is charged with an offence under s12 of the Drugs Act 2005 (failure to attend an initial assessment or stay for its duration) and is before the court for other matters.

10.71 It is your obligation to satisfy us that charges against a defendant or co-defendants constitute more than one Case such as to entitle you to claim more than one Standard Fee.

10.72 Where you make a Crown Court or High Court bail application, the work will form part of a "Case" for the purpose of Standard Fees and must be claimed as part of the Claim for work undertaken in the magistrates' court in accordance with this Specification.

### **Non-Standard Fee Claims**

10.73 A Claim for a Non-Standard Fee for Representation in the magistrates' court must not be included in your Contract Report Form. Each Claim must be submitted on a CDS7 form and will be assessed individually. You must submit the following with your Claim:

- (a) all the information specified in Paragraph **4.39 to 4.40** of this Specification, where relevant;
- (b) where enhanced rates are sought under Paragraph **10.100**, you must provide full details of how the work meets the criteria for enhancement.

The relevant Director must Assess the Claim.

10.74 Claims for payment from Assigned Counsel must also comply with the Paragraphs under the heading "Rules on Claiming" above, and must contain the same UFN and be submitted with your Claim. You must notify Counsel of the UFN number.

## Payment

10.75 Any proceedings that are committed to or sent to the Crown Court for trial under s51 of the Crime and Disorder Act 1998 (except proceedings in a magistrates' court following a remittal under paragraph 10(3)(a) or 13(2) of Schedule 3 to the Crime and Disorder Act 1998 and proceedings at any bail application where the defendant is held in custody) are paid in accordance with the provisions in the CDS (Funding) Order 2007 (as amended) and must not form part of any Claim for remuneration under this Specification.

10.76 Work claimed under this Unit of Work is paid by us either by way of Designated Area or Undesignated Area Standard Fees or Hourly Rates. The applicable fees vary depending on:

(a) the category of work and type of proceedings (as set out in the table in Paragraph **10.91**); and

(b) the Location of your Office/the magistrates' court at which work is carried out. Two different sets of Standard Fees apply in this respect:

(i) "Designated Area Standard Fees"; or

(ii) "Undesignated Area Standard Fees"

(as set out in the **Payment Annex**).

10.77 The Standard Fees do not apply to a Case in which Counsel has been assigned under a Representation Order. Payment for Assigned Counsel is dealt with below.

## Determining which Fees apply

10.78 The Designated Area Standard Fees apply to all magistrates' court work which is performed:

(a) under a Representation Order which was granted during the duration of this Contract;

(b) by a Provider whose Office is located:

(i) within one of the "Designated Areas" as defined in **Part A** (including, for the avoidance of doubt, where the work is performed in a magistrates' court located outside the Designated Areas); or

(ii) outside of the "Designated Areas" as defined in **Part A** but where you are representing a Client in a magistrates' court located within a Designated Area.

10.79 The Undesignated Area Standard Fees only apply to magistrates' court work which is performed under a Representation Order and which is not covered by the Designated Area Standard Fees.

## Items of Work covered by the Standard Fees

10.80 The items of work included in the Designated and Undesignated Area Standard Fees are as follows, which are known as core costs and include the costs of any Advocacy Assistance required by this Contract to be claimed under the Order:

- (a) any preparation;
- (b) routine letters written and routine telephone calls;
- (c) advocacy;
- (d) work done by a fee-earner acting as Agent for the Solicitor assigned under the Representation Order; and
- (e) Unassigned Counsel's preparation and advocacy.

10.81 Travel and waiting time cannot be claimed separately if you undertake a Case in a Designated Area, or if your Office is in a Designated Area.

10.82 Where you act for more than one Client in proceedings forming a single Case, the Claim for payment of a Standard Fee must cover all the Clients represented by you under one or more Representation Orders.

10.83 Where a Representation Order is granted to a Client in respect of more than one charge, offence or information, the Claim for payment of a Standard Fee must cover all the charges, offences or information that form part of one Case.

## Costs additional to the Standard Fees

10.84 The following costs are payable by us in addition to the Undesignated Area Standard Fee:

- (a) Reasonable travelling and waiting time of fee-earners and unassigned Counsel, which is be payable at the rate provided in the Hourly Rates table in the **Payment Annex**; and
- (b) Disbursements.

10.85 Disbursements are payable by us in addition to the Designated Area Standard Fee.

10.86 Travelling and waiting time of fee-earners and Unassigned Counsel is not payable by us in addition to any Designated Area Standard Fee or in respect of any Designated Area non-Standard Fee.

10.87 The rules for claiming travel and waiting are set out in **Part A** of this Specification.

10.88 You must record all waiting time of fee-earners and Unassigned Counsel in respect of each Standard Fee Claimed. You must report the cost of that waiting time to us when you make each Claim and you must ensure that you use the correct Claim codes in Guidance.

## Higher and Lower Standard Fees

10.89 Where the core costs, if they had been assessed on the Hourly Rates set out in the **Payment Annex**:

- (a) do not exceed the Lower Standard Fee Limit, as appropriate, then the appropriate Lower Standard Fee will be payable;
- (b) exceed the Lower Standard Fee Limit, as appropriate, but do not exceed the Higher Standard Fee Limit, the appropriate Higher Standard Fee will be payable;
- (c) exceed the Higher Standard Fee Limit, as appropriate, the core costs should be claimed based on the Hourly Rates set out in the **Payment Annex**.

## Determining the Category and type of proceedings

10.90 You must determine the category and type of proceedings in accordance with the table below and apply the relevant rules.

10.91 For the avoidance of doubt, you may only claim a Category 3 Fee in circumstances where your Client's Case is discontinued or withdrawn at the committal hearing.

### Categories and Types of Proceedings

Category 1 (summary only)	Category 1 (either way)	Category 2	Category 3
1.1 guilty pleas.	1.1.1 guilty pleas.	2.1 contested trials.	3.1 committal proceedings which are discontinued or withdrawn.
1.2 uncontested proceedings arising out of a breach of an order of a magistrates' court (including proceedings in a magistrates' court relating to a breach of a Crown Court community rehabilitation order, community punishment order or suspended sentence).	1.2.1 uncontested proceedings arising out of a breach of an order of a magistrates' court (including proceedings in a magistrates' court relating to a breach of a Crown Court community rehabilitation order, community punishment	2.2 proceedings which were listed and fully prepared for trial in a magistrates' court but are disposed of by a guilty plea on the day of trial before the opening of the prosecution case.	

### Categories and Types of Proceedings

Category 1 (summary only)	Category 1 (either way)	Category 2	Category 3
	order or suspended sentence).		
1.3 proceedings (other than committal proceedings) which are discontinued or withdrawn or where the prosecution offer no evidence.	1.3.1 proceedings (other than committal proceedings) which are discontinued or withdrawn or where the prosecution offer no evidence.	2.3 proceedings which were listed and fully prepared for trial in a magistrates' court but are discontinued or withdrawn or where the prosecution offers no evidence or which result in a bind over on the day of trial before the opening of the prosecution case.	
1.4 proceedings (other than committal proceedings) relating to summary offences which result in a bind over.	1.4.1 proceedings (other than committal proceedings) relating to either way offences which result in a bind over.	2.4 contested proceedings relating to a breach of an order of a magistrates' court (including proceedings relating to a breach of a Crown Court community rehabilitation order, community punishment order or suspended sentence).	
1.5 proceedings arising out of a deferment of sentence (including any subsequent sentence hearing) under section 1 of the Powers of Criminal Courts (Sentencing) Act 2000.	1.5.1 proceedings arising out of a deferment of sentence (including any subsequent sentence hearing) under section 1 of the Powers of Criminal Courts (Sentencing) Act 2000.	2.5 proceedings where mixed pleas are entered.	
1.6 proceedings prescribed under Regulation 3(2) of the CDS (General) (No 2)	1.6.1 proceedings prescribed under	2.6 proceedings prescribed under Regulation 3(2) of the CDS (General) (No.2)	

### Categories and Types of Proceedings

Category 1 (summary only)	Category 1 (either way)	Category 2	Category 3
Regulations 2001 (as amended), except where the Case was listed and fully prepared for a contested hearing to decide whether an order should be made.	Regulation 3(2) of the CDS (General) (No 2) Regulations 2001 (as amended), except where the Case was listed and fully prepared for a contested hearing to decide whether an order should be made.	Regulations 2001 (as amended), where the Case was listed and fully prepared for a contested hearing to decide whether an order should be made.	

10.92 Subject to Paragraph **10.93**, where proceedings forming one Case fall within more than one Category, the proceedings will be treated as forming part of the higher or highest in value of the Categories concerned.

10.93 Subject to Paragraph **10.94**, where there is a change of organisation assigned under a Representation Order, the proceedings will be treated as category 1 (summary only) or category 1 (either way) proceedings, as appropriate to the type of offence, for the purposes of a Claim for costs in respect of work done under the Representation Order by the Provider formerly assigned.

10.94 Where there is a change of Provider assigned under a Representation Order the provisions for payment to the Provider originally assigned (“the old Provider”) and the newly assigned Provider (“the new Provider”) will be as follows:

- (a) Except in the circumstances described in sub-paragraph **(b)** below, the old Provider and the new Provider may each submit Claims for costs. However, for the purposes of the old Provider’s Claim for costs under the Representation Order the proceedings will be treated as category 1 (summary only) or category 1 (either way) proceedings as appropriate to the type of offence.
- (b) Where
  - (i) the conducting Solicitor moves from the old Provider to the new Provider (e.g. becomes a partner in, or employee of, the new Provider); or

- (ii) the old Provider and the new Provider are, or will shortly be, closely related (e.g. the old Provider has restructured to facilitate the creation of the new Provider or there has been, or will shortly be, a merger of the old Provider and the new Provider or an acquisition of the old Provider by the new Provider); or
- (iii) the old Provider is unable to continue representing the Client following the termination of all, or part, of its Contract (or, in anticipation of this, ceases to represent the Client)

payment will be as if one Provider had been assigned throughout and only the new Provider may submit a Claim for costs;

- (c) Where the new Provider submits a Claim under Paragraph **10.94(b)** above, it will do so taking account of both its costs and the costs of the old Provider, but payment will be made only to the new Provider. The old Provider and the new Provider must agree any division of monies between themselves.

10.95 Where proceedings have not been concluded but a warrant of arrest has been issued, the proceedings will be treated as category 1 (summary only) or category 1 (either way) proceedings as appropriate to the type of offence.

### **Proceedings**

10.96 For the purposes of this Unit of Work, any proceedings specified in the Categories and Types of Proceedings table above (“the specified proceedings”) will be treated as including all Incidental Proceedings in respect of which a Representation Order is in force, whether or not the Order is the same as that in force in respect of the specified proceedings. Where a Standard Fee is payable in respect of the specified proceedings:

- (a) no separate fee will be payable in respect of the ancillary proceedings; but
- (b) all work done or costs incurred in the ancillary proceedings will be treated as done or incurred in the specified proceedings.

10.97 Proceedings will be treated for the purposes of this Section of this Specification as forming part of one Case where they relate to one or more charges or information which are preferred or laid at the same time or which are founded on the same facts or which form or are part of a series of offences.

10.98 Where a warrant of arrest has been issued and a Claim has been made prior to the final disposal of the proceedings, any costs which would have been payable upon the final disposal of the proceedings will be reduced to the extent that they formed part of the costs previously claimed

### **Reduced and Enhanced Rates**

10.99 Only in respect of non-Standard Fee Claims, we may allow Claims at less than the Hourly Rates specified in the **Payment Annex** where it appears to us reasonable to do so having regard to the competence and dispatch with which the work was done.

10.100 Only in respect of non-Standard Fee Claims, we may allow Claims at more than the Hourly Rates specified in the **Payment Annex** where it appears to us, taking into account all the relevant circumstances of the case, that:

- (a) the work was done with exceptional competence, skill or expertise; or
- (b) the work was done with exceptional dispatch; or
- (c) the case involved exceptional circumstances or complexity

and we may have regard to the generality of proceedings to which these provisions apply in determining what is exceptional.

10.101 Where we consider, in accordance with the Paragraph **10.100** above, that any item of work should be allowed at more than the specified Hourly Rates, we will apply to that item of work a percentage enhancement in accordance with Paragraphs **10.102 to 10.104**.

10.102 In determining the percentage by which fees should be enhanced in accordance with Paragraph **10.100**, we will have regard to:

- (a) the degree of responsibility accepted by you and your staff;
- (b) the care, speed and economy with which the case was prepared;
- (c) the novelty, weight and complexity of the case.

10.103 Except where proceedings relate to serious or complex fraud, the relevant Hourly Rate will not be enhanced by more than 100 per cent.

10.104 Where proceedings relate to serious or complex fraud, the relevant Hourly Rate will not be enhanced by more than 200 per cent.

### **Payment for Assigned Counsel**

10.105 Work undertaken by Assigned Counsel under this Unit of Work must be claimed at the rates specified in the **Payment Annex**.

10.106 These rates only apply where Counsel is assigned under a Representation Order in the magistrates' court under this Unit of Work. The rates are the maximum amounts allowable per item except where expressed as Hourly Rates. Where an Hourly Rate is specified we will determine any fee for such work in accordance with that Hourly Rate, provided that the fee determined must not be less than the minimum amount specified.

10.107 Where a refresher fee is claimed in respect of less than a full day, we will allow such fee as appears reasonable having regard to the fee which would be allowed for a full day.

10.108 Where we consider (taking into account all the relevant circumstances of a Case), that the exceptional circumstances of a Case mean that the rates set out in the **Payment Annex** would not provide reasonable remuneration for some or all of the work allowed, we may allow such amounts as appear to us to be reasonable remuneration for the relevant work.

## **Payment on Account of Disbursements**

10.109 You may submit an application for Payment on Account of a Disbursement for which you have incurred liability in Criminal Proceedings, within the scope of this Section of the Contract, provided that the following conditions are satisfied:

- (a) you have obtained prior authority to cover the amount sought; and
- (b) you have incurred liability for the Disbursement under that authority; and
- (c) the amount of a single Disbursement (including VAT) is likely to exceed the value of your next monthly payment which falls due after the liability for the Disbursement has been incurred.

10.110 An application for Payment on Account may be made at any time before you submit your final Claim for costs and must:

- (a) not exceed the maximum amount authorised under the prior authority; and
- (b) be made in such manner as we may direct and must be accompanied by a copy of all relevant prior authorities and any invoices or other documents to establish that the liability has been incurred.

10.111 We will authorise a Payment on Account, subject to the prior authority limit, if it appears to have been reasonably incurred in accordance with the prior authority. This does not prevent you from seeking more than the amount authorised by the prior authority on costs Assessment.

10.112 If we authorise and pay a request for a Payment on Account of the Disbursement, then it will usually be paid through the SMP system.

10.113 If we refuse to authorise a request for a Payment on Account, there is no right of appeal, but you may still seek to recover the Disbursement on costs Assessment. You may also submit a fresh application for a Payment on Account, to provide additional information or to explain a change in circumstances.

## **Own Client work: Pre-Order Cover; Early Cover and means test form completion**

### **Scope and Qualifying Criteria**

10.114 You may only claim for Pre-Order Cover or Early Cover if an application for a Representation Order has been made in the magistrates' court and refused and the requirements under the heading Pre-Order Cover or the heading Early Cover are satisfied.

10.115 You must only claim for means test form completion where the requirements of Paragraph **10.126** are satisfied.

10.116 You can only make a Claim for either:

- (a) Pre-Order Cover; or
- (b) Early Cover; or
- (c) a means test form completion fee.

You must not Claim for more than one of the above in relation to a Case.

### **Pre-Order Cover**

10.117 Where an application for a Representation Order is made in the magistrates' court and refused on the Interests of Justice Test (irrespective of whether the Client passes or fails the Financial Eligibility Test), you may only claim a limited amount of work carried out on that Matter or Case as Pre-Order Cover at the rates set out in the **Payment Annex**, subject to the limit set out in the **Payment Annex**. A qualified solicitor who is a Designated Fee Earner or a crime Supervisor must have determined that the Case met the Interest of Justice Test and has documented on file the reasons why (either by retaining a copy of the application for a Representation Order or some other means).

10.118 You must not make any claim for Early Cover in addition to making a claim for Pre-Order Cover.

10.119 The effective date of refusal is the date on which the court notifies you in writing or by other means.

10.120 An appeal may be made only pursuant to Regulation 4 of the CDS (Representation Orders: Appeals etc.) Regulations 2006 against the court's decision not to grant a Representation Order on the grounds that the Interests of Justice do not require a Representation Order to be granted.

10.121 If you appeal the court's decision, in the circumstances outlined in Paragraph **10.120**, then any work undertaken in relation to lodging the appeal is covered by the Pre-Order Cover Fixed Fee. If the appeal against the decision not to grant a Representation Order is unsuccessful, you will not be able to claim any further work undertaken on the Case itself.

10.122 If a Representation Order is granted on appeal then all the work undertaken since the date on which the original properly completed application was received

by the court, including any Pre-Order Work, must be claimed under the Representation Order as part of the Standard Fee Claim. A copy of the court's written notification of the refusal to grant the Representation Order must be available on file.

10.123 The Pre-Order Cover Fixed Fee only includes any combination of preparation, advocacy, routine letters and telephone calls, travel and waiting at the applicable rates, up to the limit set out in the **Payment Annex**.

### **Early Cover**

10.124 Where an application for a Representation Order is made and refused because the Client has failed the Financial Eligibility Test you may claim one Early Cover Fixed Fee in respect of work carried out on that Matter or Case provided that all of the following conditions are also met:

- (a) a properly completed application for Representation has been received by the Representation Authority by 9am on the sixth Business day following the date of first instruction (provided that the date of first instruction is on or before the date of the first hearing);
- (b) you have taken all reasonable steps to assist the Client complete and submit the application with the appropriate supporting evidence;
- (c) the application had not been granted or refused by the start of the first hearing;
- (d) you represent the Client at the first hearing;
- (e) the first hearing moves the Case forward and any adjournment is justified; and
- (f) the final decision is that the Case passes the Interests of Justice Test but not the Financial Eligibility Test.

10.125 In cases where the first hearing takes place before the Client has been able to submit an application you may still claim an Early Cover Fixed Fee provided that:

- (a) the conditions in Paragraphs **10.124(d)** and **(e)** have been met; and
- (b) the Client proceeds to submit an application in accordance with the conditions in Paragraphs **10.124(a)** and **(b)**; and
- (c) the subsequent determination of the application satisfies the condition in Paragraph **10.124(f)**.

### **Means test form completion**

10.126 You may only Claim a means test form completion fee as specified in circumstances where:

- (a) you have completed an application for Representation Order for a Client; and

- (b) neither Pre-Order Cover nor Early Cover is claimed; and
- (c) you have advised the Client that, although their Case is one which would, in all probability, satisfy the Interests of Justice Test, they would not satisfy the means test; and
- (d) you advised the Client within 10 working days of the day on which the Client was charged or summonsed with the offence in question; and
- (e) you have recorded on file why you considered the Case would satisfy the Interests of Justice Test (but you will not need to make the application for a Representation Order to court); and
- (f) the Client does not proceed to instruct you as a private client in respect of that Case.

### **Pre-Order Cover, Early Cover and means test form completion**

- 10.127 Payment for Pre-Order Cover, Early Cover or means test form completion fee must not be claimed by a court Duty Solicitor for work undertaken during the court Duty Period.
- 10.128 Where you act for co-defendants and provide Pre-Order Cover, Early Cover or means test form completion, separate Claims must be submitted for each Client represented.

### **Limits on Claims**

- 10.129 You must comply with the upper limit for Claims for Pre-Order Cover as specified in the **Payment Annex**. The figures include any travel, waiting and Disbursements but are exclusive of VAT.

### **Payment**

- 10.130 Claims for Pre-Order Cover must be made at the Hourly Rates specified in the **Payment Annex**, subject to the limit also set out in the **Payment Annex**.
- 10.131 You cannot claim for disbursements, travel or waiting in addition to the Early Cover Fixed Fee, specified in the **Payment Annex**.
- 10.132 You cannot claim any disbursements, or travel or waiting costs in addition to the refused means test form completion fee, which is a Fixed Fee, specified in the **Payment Annex**.

## **Representation in Prescribed Proceedings in the Crown Court other than in appeals from the magistrates' court**

### **Scope**

10.133 This Unit of Work may only be undertaken for a Client in Prescribed Proceedings, or for a Client who wishes to make a free standing application to the Crown Court to vary or have discharged a sentence or order in circumstances where the fees are not specified in the CDS (Funding) Order 2007 (as amended). You should note that an Upper Limit specified in the **Payment Annex** applies to work undertaken under this Unit of Work and operates as a Costs Limitation.

### **Qualifying Criteria**

10.134 Regulations may require your Client to repay some or all of his or her costs by way of a Contribution Order for this Unit of Work and you must advise your Client about the Crown Court means test at the outset of his or her Case.

### **Application Procedure**

10.135 In order for you to provide Representation under this Unit of Work, your Client must have had a Representation Order granted by the Representation Authority by completing our CDS14 and 15 forms.

### **Counsel**

10.136 If you instruct Counsel then you must agree Counsel's fee, and the rates which you use to agree Counsel's fee must not exceed the Hourly Rates which are applicable to a Solicitor undertaking the advocacy at the relevant Hourly Rates specified in the **Payment Annex** for this Unit of Work.

10.137 You must pay Counsel's agreed fee directly in accordance with this Contract.

10.138 When instructing Counsel, you must inform him or her of the payment rates and ensure that Counsel's fee note contains a breakdown of the time claimed at the appropriate rates.

10.139 You may claim any time spent instructing Counsel as Contract Work. However, if you choose to accompany Counsel to any hearing, neither the time spent at the hearing nor the travelling and waiting can be claimed or paid as Contract Work.

### **Rules on claiming**

10.140 , A single Claim must be submitted for all work undertaken in the Criminal Proceedings Class of Work for a Client in the same Case, including except where a Claim has been submitted already in the same Matter or Case because Paragraph **10.142(c)** applies. The Claim may be for one or more of the Units of Work covered by this Class.

10.141 A single Claim must be submitted in circumstances where more than one application is consolidated into one Case.

10.142 A Claim may only be submitted when:

- (a) the Case has concluded; or
- (b) it is known that no further work will be undertaken for the Client in the same Case; or
- (c) it is unclear whether further work will be required or not and a minimum of one month has elapsed since the last work in the Case was undertaken.

### **Limits on Claims**

10.143 Subject to any extensions to the Upper Limit granted following an application made under Paragraphs **5.9 to 5.20** of this Specification, the Upper Limit specified in the **Payment Annex** applies to Claims.

### **Payment**

10.144 You must claim for Representation provided under this Unit of Work at the rates which are specified in the **Payment Annex**.

## **Representation in the Crown Court under a Representation Order in mainstream Criminal Proceedings**

### **Scope**

10.145 You can only undertake Criminal Proceedings work (in cases which are not classified as VHCCs) in the Crown Court by virtue of having this Contract and if your Client has been granted a Representation Order by the Representation Authority.

### **Qualifying Criteria**

10.146 Cases which have been committed to or sent to the Crown Court by the magistrates' court are automatically treated as passing the Interests of Justice Test.

10.147 A Financial Eligibility Test is carried out by the magistrates' court which commits or sends your Client's Case to the Crown Court, which may result in your Client having to repay his defence costs under a contribution order, during and after his or her Case concluding. You must advise your Client about the Crown Court means test at the outset of his or her Case.

### **Service requirements**

10.148 You must take into account the Guidance on case planning when conducting a Crown Court case.

### **Remuneration**

10.149 You will be remunerated for this work in accordance with the CDS (Funding) Order 2007 (as amended).

10.150 Where you undertake work in the Crown Court in accordance with a Representation Order properly granted by the Court, if it transpires that it is not possible to claim under the CDS (Funding) Order 2007 (as amended) for the work you undertook, you must contact us. We will make arrangements for you to be remunerated as though the work were conducted under Paragraph **10.133-10.144**.

### **Payments on Account of Disbursements**

10.151 Applications for Payments on Account in the Crown Court are governed by regulation 19 of the CDS (General)(No.2) Regulations 2001 and Article 14 of the CDS (Funding) Order 2007.

## **Representation in the High Court or county court**

### **Scope**

- 10.152 This Unit of Work covers only civil proceedings in the High Court or (if approved in advance by us) the county court in any proceedings arising from Criminal Proceedings except bail proceedings, appeals by way of case stated or Associated CLS Work. You must obtain Prior Authority from us to undertake work under this Unit of Work.
- 10.153 This Unit of Work covers civil proceedings that may be regarded as incidental to Criminal Proceedings (e.g. an application to obtain papers from a civil case that are relevant to Criminal Proceedings).

### **Qualifying Criteria**

- 10.154 The Client must have been granted a Representation Order by the Representation Authority or High Court.
- 10.155 There is no Financial Eligibility Test for this Unit of Work.

### **Rules on claiming**

- 10.156 The procedures under this Specification for the Assessment of remuneration for Representation under this Unit of Work are the same as those contained in the Civil Legal Aid (General) Regulations 1989 (as amended) and Prior Authority may be applied for and granted in accordance with this Unit of Work.

### **Payment**

- 10.157 You must claim for work undertaken under this Unit of Work at the rates specified in the **Payment Annex**.
- 10.158 The remuneration provisions which govern this work are the same as those rates (including enhanced rates) which are payable for Legal Representation in accordance with the civil Specification.

### **Payment for Assigned Counsel**

- 10.159 Work undertaken by assigned Counsel under this Unit of Work must be claimed at the rates specified in the **Payment Annex**.
- 10.160 The rates set out in the **Payment Annex** only apply where Counsel is assigned under a Representation Order under this Unit of Work. The rates are the maximum amounts allowable per item except where expressed as Hourly Rates. Where an Hourly Rate is specified we will determine any fee for such work in accordance with that Hourly Rate, provided that the fee determined will not be less than the minimum amount specified.
- 10.161 Where a refresher fee is claimed in respect of less than a full day, we will allow such fee as appears reasonable having regard to the fee which would be allowed for a full day.

10.162 Where we consider (taking into account all the relevant circumstances of a Case), that the exceptional circumstances of a Case mean that the rates set out in the **Payment Annex** would not provide reasonable remuneration for some or all of the work allowed, we may allow such amounts as appear to us to be reasonable remuneration for the relevant work.

### **Payment on Account of Disbursements**

10.163 You may submit an application for Payment on Account of a Disbursement for which you have incurred liability by following the rules at Paragraphs **10.109** to **10.113**.

## 11 APPEALS AND REVIEWS

### Advice and Assistance on appeals against conviction or sentence (where a newly instructed representative is not covered by an existing Representation Order) or applications to the Criminal Cases Review Commission (CCRC)

#### Scope

- 11.1 This Unit of Work relates to free standing Advice and Assistance in relation to an appeal against conviction or sentence, including an appeal by way of case stated or an application to vary an order or sentence where not covered by an existing Representation Order. You should note that an Upper Limit specified in the **Payment Annex** applies to work undertaken under this Unit of Work and operates as a Costs Limitation.
- 11.2 This Unit of Work also covers an application to the Criminal Cases Review Commission (CCRC).
- 11.3 Where the Client has a Representation Order in the magistrates' court or the Crown Court, it covers obtaining advice on appeal and the preparation of any application for leave to appeal or giving notice of appeal against conviction or sentence. It also covers steps relating to the stating of a case by the magistrates' or the Crown Court. It is not appropriate for you to complete a separate application form for Advice and Assistance under this Unit of Work in those circumstances.
- 11.4 Where the Client does not have a Representation Order in the magistrates' court or Crown Court, he or she may require advice on the prospects of an appeal. You should provide confirmation of the grounds of an appeal.
- 11.5 If the Client has received an adverse opinion on appeal and wishes to obtain a further opinion, you must consider how long it was since the first opinion was given. If recent, and it appears that all issues have been considered, no further work may be undertaken.
- 11.6 Where there is further evidence or the Solicitor can point to some defect in the opinion or the proceedings, then further work may be justified for a further opinion, regardless of when the first opinion was obtained. We will allow you up to three hours (30 units) for the preparation of the instructions to Counsel or a Solicitor with higher court advocacy rights.
- 11.7 Where advice is sought in connection with an appeal to the Court of Appeal and you have undertaken all authorised steps under any Crown Court Representation Order or there has been a change of Provider, you must consider whether a grant of Legal Aid is available directly from the Court of Appeal to cover further work. If so, you should make the appropriate application to that court, rather than providing Advice and Assistance. Advice and Assistance should not be used as an alternative or supplement to the Court of Appeal's powers to grant legal Representation, where only Counsel has been authorised.

## **Qualifying Criteria**

11.8 The Sufficient Benefit Test must be satisfied in order to provide Advice and Assistance under this Unit of Work.

## **Financial Eligibility Tests**

11.9 Financial Eligibility Tests set out in Regulations must be applied to advice and assistance under this Unit of Work.

## **Application procedures**

11.10 An application form must be completed in accordance with this Specification.

## **Postal applications**

11.11 You may only exercise the Devolved Power to accept an application for Advice and Assistance by post from a Client where there is good reason to do so.

11.12 Any reliance on a good reason must be noted on the file.

## **Telephone advice**

11.13 You may only Claim payment for advice given to a Client over the telephone before that Client has signed the application form where:

- (a) the Client cannot for good reason attend your Office; and
- (b) the Client meets the Qualifying Criteria for the provision of Advice and Assistance (including the Financial Eligibility Test) and has subsequently signed the application form.

11.14 You must consider whether it is in all the circumstances appropriate to provide advice to a Client over the telephone before that Client has signed the application form.

11.15 The good reason relied upon must always be noted and kept on the file.

## **Outward travel**

11.16 You may only Claim for the mileage or cost of public transport for outward travel (but not travelling time, except as allowed under Paragraph **11.17**) to visit a Client away from your Office before the application form is signed where:

- (a) the visit is justified for good reason (and a note on the file is made specifying that good reason); and
- (b) the Client meets the Qualifying Criteria for this Unit of Work and does subsequently sign the application form.

11.17 Where you are visiting the Client in detention, prison or hospital then you may also claim the travelling time at the appropriate rate. The provisions of the Paragraph **11.16** will need to be satisfied for any Claim to be made.

11.18 Costs must be reasonably incurred taking account of all the circumstances.

### **Criminal Cases Review Commission**

11.19 You must take instructions from the Client to establish whether the case is one which the CCRC could consider. You must bear in mind that the CCRC is a last resort and an application to the CCRC may only be made if the Client has either appealed against the original conviction or leave to appeal has been refused.

11.20 If your Client's Case is suitable to be heard by the CCRC, you must consider whether the case may be able to meet the referral criteria applied by the CCRC.

11.21 Once the basic information has been obtained by way of a statement from the Client, you must carry out an initial screening of the case to determine whether an application to the CCRC should be made. This process enables you to screen out weak claims which would not meet the CCRC's referral criteria. Although the information available at this stage may be very limited, the decision as to whether the costs of further investigation are justified must be made by you in the light of the available information and using your professional skill and common sense.

11.22 If a Client qualifies for Advice and Assistance, initial case screening will normally be carried out within 20 units (two hours). It may not be possible to complete case screening within this time if the Client is located at a distant prison. The initial case screening will cover taking instructions, considering any relevant papers or records (if any are available at that stage) and the provision of initial advice as to law and procedure. You must reject a case following initial screening if there is no reasonable prospect that it will meet the CCRC referral criteria. Clearly, uncertainty over the merits at the initial screening stage would not necessarily result in you refusing to take forward an application, particularly where you consider that further investigations are necessary to establish whether the referral criteria are met.

### **Transcripts – CCRC matters**

11.23 If you seek a transcript of part or all of the evidence, then a specific justification must be provided.

### **Counsel – (CCRC matters)**

11.24 You may instruct Counsel in CCRC matters where it falls outside your expertise and it is reasonable for you to seek specialist advice from Counsel or Solicitor with higher court advocacy rights. The expense of any Disbursement or Counsel's advice will count towards costs for the purposes of calculating whether an extension to the upper limit is necessary.

11.25 It may be necessary for you to exceed the upper limit depending on the individual circumstances of the case. In these circumstances, an application must be made by you to the Director in accordance with this Specification. There

is no other form of Legal Aid available for this type of work although the CCRC will, in considering the application, make what further enquiries it considers appropriate to enable it to investigate the case and reach a decision.

## **Previous Advice and Assistance**

- 11.26 You must not Claim for Advice and Assistance provided to a Client who has received Advice and Assistance for the same matter from another Provider within the six months preceding the application, except where:
- (a) there is a gap in time and circumstances have changed materially between the first and second occasions when the Advice and Assistance was sought; or
  - (b) the Client has reasonable cause to transfer from the first Provider; or
  - (c) the first Provider has confirmed to you that he or she will be making no Claim for payment for the Advice and Assistance.
- 11.27 When providing Advice and Assistance in the circumstances set out in this Paragraph you must record the justification for doing so on the file. This is particularly important under this Unit of Work, as a Provider who acted under a Representation Order in respect of the proceedings from which the appeal is being made should have advised the Client under the terms of that Representation Order. For the avoidance of doubt, this is a Devolved Power.
- 11.28 If a Client changes Solicitor within the same organisation or a Provider moves to work for a different Provider and continues to advise the Client, then there will not have been Advice and Assistance from 'another Provider' for the purposes of this Paragraph but the second or subsequent Provider must not Claim for Advice and Assistance in addition to the first Provider. However, if the Client instructs another Provider and the same Solicitor does not continue to provide Advice and Assistance to the Client, this will be Advice and Assistance from 'another Provider'.
- 11.29 You must not Claim for Advice and Assistance under the terms of any of the exceptions contained in Paragraph **11.26(a) to (c)** where:
- (a) the Client simply disagrees with the first advice and wants a second opinion;
  - (b) there is only a short time between the first and second occasions when the Advice and Assistance is sought and no material change of circumstances has occurred;
  - (c) the change requested is from a second to a third Provider (unless exceptionally it is reasonable for a further change); or
  - (d) there is no reasonable explanation for the Client seeking further Advice and Assistance from a new Provider.
- 11.30 Where Advice and Assistance is provided in contravention of the terms of Paragraph **11.26**, then the work undertaken cannot be claimed or paid as Contract Work.

- 11.31 If in doubt, you must assume that previous Advice and Assistance has been given and ensure that any work carried out reflects the fact that some work may have already been done on the matter to ensure that there is no element of repetition, particularly if you are instructed within six months of the Client's conviction, as any Representation Order issued to provide for his or her Representation at the trial includes payment to those who acted under that Representation Order for an advice on appeal.
- 11.32 If the Client has received previous Advice and Assistance but you are permitted to provide further Advice and Assistance under Paragraph **11.26**, you must assign a new UFN and must make a note on the file to confirm that Advice and Assistance has been given previously by another Provider. In addition, the Client must complete a fresh application form and must meet the Qualifying Criteria. We may monitor the number of instances in which you provide Advice and Assistance under Paragraph **11.26**.
- 11.33 You must ascertain whether previous Advice and Assistance has been provided in the same matter by making reasonable enquiries of your Client at the earliest opportunity. If the Client has received Advice and Assistance, and the circumstances in Paragraph **11.26(a) to (c)** do not apply, you must either provide Advice and Assistance and not make a Claim for it, or should require the Client to contact the Provider who provided the original Advice and Assistance.
- 11.34 It is only reasonable to incur limited further costs where previous Advice and Assistance has been received.
- 11.35 If you provide Advice and Assistance where previous Advice and Assistance has been given for the same matter in accordance with Paragraph **11.28** then any work undertaken by the previous Provider will not count for the purposes of the Upper Limit specified in the **Payment Annex**.

### **Further instructions after a Matter ends or a Claim has been submitted**

- 11.36 Where you have previously provided Advice and Assistance to a Client in relation to a matter, and you have already claimed for the matter in a Claim submitted to us in accordance with the terms of this Specification, then any further Advice and Assistance provided to the Client in relation to the same Matter must be the subject of a separate application. The original upper limit (as extended) will continue to apply, where relevant.
- 11.37 It is not reasonable to provide Advice and Assistance in relation to a matter where you have previously provided it unless there are substantive issues outstanding from the first occasion when Advice and Assistance was provided or there has been a material development or change in the Client's circumstances such that further Advice and Assistance is now required.
- 11.38 If you provide further Advice and Assistance under Paragraphs **11.36** and **11.37** above then:
- (a) the Client must complete a further application form and you must establish that any Qualifying Criteria are met, where relevant;
  - (b) your file should make reference to any previous closed file and the files should be kept together for Audit purposes;

- (c) you must assign the same UFN number to the new matter; and
- (d) you may need to consider an extension to the upper limit where appropriate, unless the previous limit was not exhausted.

### **Rules on claiming**

11.39 A single Claim must be submitted for all work undertaken in the Appeals and Reviews Class of Work for a Client in the same Matter or Case except where a Claim has been submitted already in the same Matter or Case because Paragraphs **11.41(c)** or **(d)** below apply.

11.40 A Claim must not be submitted in respect of work falling within this Unit of Work where Representation has been provided for the same Client in the proceedings in which the conviction or sentence was imposed in a magistrates' court, the Crown Court or the Court of Appeal, and advice on appeal or sentence can be claimed under the Representation Order covering those proceedings (except where the Client has changed Solicitor to another Provider since the original proceedings).

11.41 A Claim under this Unit of Work may only be submitted when:

- (a) the matter has concluded; or
- (b) it is known that no further work will be undertaken for the Client in the same matter; or
- (c) it is unclear whether further work will be required or not and a minimum of one month has elapsed since the last work in the matter was undertaken; or
- (d) in the case of a Claim for Advice and Assistance on an appeal against conviction or sentence, including an appeal by way of case stated or an application to vary a sentence: where a Representation Order is subsequently granted by the relevant court, as soon as the Representation Order has been granted.

### **Limits on Claims**

11.42 Subject to any extensions to the Upper Limit granted following an application made under Paragraphs **5.09 to 5.20** of this Specification, the Upper Limit specified in the **Payment Annex** applies to Claims.

### **Payment**

11.43 You must Claim for work undertaken within this Class of Work at the rates specified in the **Payment Annex**.

## **Representation on an appeal by way of case stated**

### **Scope**

- 11.44 This Unit of Work may only be undertaken for a Client in a Matter or Case unless the Client's Matter or Case is (or should be) a VHCC and is (or should be) classified as a VHCC.
- 11.45 This Unit of Work only covers an application under s111 of the Magistrates' Court Act 1980 or s28 of the Supreme Court Act 1981 for the magistrates' court or Crown Court (respectively) to state a case.
- 11.46 The application to the magistrates' court or Crown Court to state a case is covered and paid for under the Representation Order in existence in the relevant proceedings.
- 11.47 Where a court refuses to state a case, you should without delay apply for permission to bring judicial review, seeking either a mandatory order to compel the court to state a case or an order quashing the decision under challenge.
- 11.48 An application for judicial review in the circumstances described in Paragraph **11.47** may only be made under the Associated CLS part of this Contract.
- 11.49 If the magistrates' court or Crown Court does state a case, you must apply to the High Court (Administrative Court) for a Representation Order in respect of the High Court appeal proceedings.

### **Qualifying Criteria**

- 11.50 In order to provide Representation under this Unit of Work, the Client must have been granted a Representation Order by the High Court for the purposes of the appeal.

### **Prior authority**

- 11.51 You must comply with the rules for applying for prior authority in this Specification.

### **Counsel**

- 11.52 When you instruct Counsel, the instructions delivered must include a copy of the Representation Order and you must notify Counsel of the UFN and any amendments made to the Representation Order. The onus is on Counsel to check that any work undertaken is covered by the scope of the Order.

### **Rules on claiming**

- 11.53 A single Claim must be submitted to the Senior Court Costs Office for all work undertaken for a Client in an appeal by way of case stated in the Appeals and Reviews Class of Work in the same Matter or Case except where a Claim has been submitted already in the same Matter or Case because Paragraphs **11.54(c)** or **(d)** below apply.

- 11.54 A Claim under this Unit of Work may only be submitted when:

- (a) the matter has concluded; or
- (b) it is known that no further work will be undertaken for the Client in the same matter; or
- (c) it is unclear whether further work will be required or not and a minimum of one month has elapsed since the last work in the matter was undertaken; or
- (d) in the case of a Claim for Advice and Assistance on an appeal against conviction or sentence, including an appeal by way of case stated or an application to vary a sentence, where not covered by an existing Representation Order: where a Representation Order is subsequently granted by the relevant court, as soon as the Representation Order has been granted.

11.55 You must claim for work undertaken in the Divisional Court under this Unit of Work at the rates specified in the **Payment Annex**.

### **Payment for Counsel under the Representation Order**

11.56 Work undertaken by Counsel under this Unit of Work must be claimed at the rates specified in the **Payment Annex**.

11.57 Where a refresher fee is claimed in respect of less than a full day, we will allow such fee as appears reasonable having regard to the fee which would be allowed for a full day.

11.58 Where we consider (taking into account all the relevant circumstances of a case), that the exceptional circumstances of a case mean that the rates set out in the above table would not provide reasonable remuneration for some or all of the work allowed, we may allow such amounts as appear to us to be reasonable remuneration for the relevant work.

### **Payment on Account of Disbursements**

11.59 You may submit an application for Payment on Account of a Disbursement for which you have incurred liability in Criminal Proceedings, within the scope of this Contract, in the High Court, provided that the following conditions are satisfied:

- (a) you have obtained prior authority to cover the amount sought; and
- (b) you have incurred liability for the Disbursement under that authority; and
- (c) the amount of a single Disbursement (including VAT) is likely to exceed the value of your next SMP which falls due after the liability for the Disbursement has been incurred.

11.60 An application under Paragraph **11.59** may be made at any time before you submit your final Claim for costs and must:

- (a) not exceed the maximum amount authorised under the prior authority; and

(b) be made in such manner as we may direct and must be accompanied by a copy of all relevant prior authorities and any invoices or other documents to establish that the liability has been incurred.

- 11.61 We will authorise a Payment on Account, subject to the Prior Authority limit, if it appears to have been reasonably incurred in accordance with the prior authority. This does not prevent you from seeking more than the amount authorised by the prior authority on costs Assessment.
- 11.62 If we authorise Payment on Account of the Disbursement, then it will be paid through the SMP system.
- 11.63 If we refuse to authorise payment, there is no right of appeal, but you may still seek to recover the Disbursement on costs Assessment.

## **Representation in the Crown Court under a Representation Order in Prescribed Proceedings on appeal from the magistrates' court**

### **Scope**

11.64 This Unit of Work may only be undertaken for a Client in appeals from the Magistrates' Court in Prescribed Proceedings. You should note that an Upper Limit specified in the **Payment Annex** applies to work undertaken under this part of the Contract and operates as a Costs Limitation.

### **Qualifying Criteria**

11.65 Regulations impose a Financial Eligibility Test for this Unit of Work and you must inform your Client that they may have to pay a contribution order at the conclusion of his or her case, depending on his or her means.

### **Application Procedures**

11.66 In order for you to provide Representation under this Unit of Work, the Client must have had a Representation Order granted by the Representation Authority by completing forms CDS14 and 15.

### **Counsel**

11.67 If you instruct Counsel then you must agree Counsel's fee, and the rates which you use to agree Counsel's fee must not exceed the Hourly Rates which are applicable to a Solicitor undertaking the advocacy at the relevant Hourly Rates specified in the **Payment Annex** for this Unit of Work.

11.68 You must pay Counsel's agreed fee to Counsel directly, in accordance with this Contract.

11.69 When instructing Counsel, you must inform him or her of the payment rates and ensure that Counsel's fee note contains a breakdown of the time claimed at the appropriate rates.

11.70 You may Claim any time spent instructing Counsel as Contract Work. However, if you choose to accompany Counsel to any hearing, neither the time spent at the hearing nor the travelling and waiting must be recorded or claimed as Contract Work.

### **Rules on claiming**

11.71 A single Claim must be submitted for all work undertaken in the Criminal Proceedings Class of Work for a Client in the same Case except where a Claim has been submitted already in the same Case because Paragraph **11.73(c)** applies. The Claim must be for one or more of the Units of Work covered by this Class.

11.72 A single Claim must be submitted in respect of all Clients where a Claim is made under this Unit of Work where you represent two or more Clients in the same Case.

11.73 A Claim may only be submitted when:

- (a) the Case has concluded; or
- (b) it is known that no further work will be undertaken for the Client in the same Case; or
- (c) it is unclear whether further work will be required or not and a minimum of one month has elapsed since the last work in the Case was undertaken.

### **Limits on Claims**

11.74 Subject to any extensions to the Upper Limit granted following an application made under Paragraphs **5.09 to 5.20** of this Specification, the Upper Limit specified in the **Payment Annex** applies to Claims.

### **Payment**

11.75 You must claim for Representation provided under this Unit of Work at the rates which are specified in the **Payment Annex**.

## 12 PRISON LAW

### Scope

- 12.1 This is the Prison Law Part of this Specification. Prison Law is a Class of Work within the Crime Category. You must have applied to undertake Prison Law work as part of your tender for this Contract and have a Prison Law Supervisor in order to do work under this Section. Your Schedule must also authorise you to do Prison Law work. The provisions in this Section of this Specification override any conflicting provisions elsewhere in **Part B** of this Specification.
- 12.2 Advice and Assistance on a Matter under this part of the Contract is paid under a Fixed Fee Scheme only, with a mechanism whereby if your costs reach a specified amount which is higher than the Fixed Fee (the Exceptional Threshold), that Matter is assessed by us and paid on an Hourly Rates basis.
- 12.3 Advocacy Assistance on a Matter under this part of the Contract is paid under a Standard Fee Scheme only, where the amount of your costs determine whether you may claim the Lower Standard Fee, the Higher Standard Fee or whether your costs are assessed by us as a Non-Standard Fee and paid on an Hourly Rates basis.
- 12.4 Prison Law covers Treatment Cases, Sentence Cases, Disciplinary Cases and Parole Board Cases only.
- 12.5 Provided a Matter passes the Qualifying Criteria, you may provide assistance under this part of the Contract to a prisoner who is either on remand or serving a prison sentence. You must obtain prior approval on a form specified by us before commencing a Treatment Case. A Treatment Case undertaken without us having granted you prior approval is not Contract Work and cannot be claimed for under this Contract. You do not have to apply for prior approval if you are working under a system of New Matter Starts which we have introduced under Paragraph **12.24**.

### Qualifying Criteria

#### The Sufficient Benefit Test

- 12.6 The Sufficient Benefit Test must be satisfied before you commence, or continue, to work on a Matter under this Specification. The test is as follows:

**Advice and Assistance or Advocacy Assistance may only be provided on legal issues concerning English and Welsh law and where there is sufficient benefit to the Client, having regard to the circumstances of the Matter, including the personal circumstances of the Client, to justify work or further work being carried out.**

**There should be realistic prospect of a positive outcome that would be of real benefit to the Client.**

- 12.7 In all Matters undertaken under this Part of the Contract, you must set out briefly in a file note how the Sufficient Benefit Test has been met, and how it continues to be met. This will be checked on Audit.
- 12.8 Files which do not have a note setting out how the Sufficient Benefit Test has been met and which do not appear objectively to pass the Sufficient Benefit Test may be nil-assessed by us.
- 12.9 You must not provide Advice and Assistance where the Client is seeking advice on non-legal issues, as this is not Contract Work.
- 12.10 In starting any Matter under this Part of the Contract, the Sufficient Benefit Test must be applied as a cost benefit test namely, whether a notional reasonable private paying client of moderate means would pay for the legal advice and assistance or advocacy assistance.
- 12.11 We would not expect to fund a Matter under this part of the Contract which did not raise a significant legal or human rights issue.
- 12.12 Cases that have no realistic prospect of success or positive outcome for the Client will not be paid for as Contract Work. Where you consider that a Case, has minimal, or borderline prospects of success, but you consider that there is still some benefit to the Client for Advice and Assistance or Advocacy Assistance to be granted, you must set out clearly your justification on a file note.
- 12.13 Cases that have minimal benefit or impact on the Client do not satisfy the Sufficient Benefit Test and must not be claimed for as Contract Work.

### **Financial Eligibility**

- 12.14 All Units of Work under this part of the Contract are subject to the Client being financially eligible (unless the Client is a Child).
- 12.15 You must assess your Client's Financial Eligibility in accordance with Schedule 1 to the CDS (General)(No.2) Regulations 2001(as amended) and must not provide assistance under this part of the Contract to a person who is not financially eligible under those Regulations.

### **Application procedures**

- 12.16 A properly completed application, signed by the Client, must be kept on your file for Audit purposes. You must not make a Claim under this Part of the Contract unless the Client has signed the application forms and is financially eligible to receive assistance.

### **Postal rules**

- 12.17 This Paragraph overrides the postal rules in **Part A** of this Specification. Wherever possible, you must arrange for the Client to complete the application forms by post, after you receive instructions and before you commence work.
- 12.18 In Advice and Assistance Matters, you should, wherever possible conduct the matter by way of correspondence with the Client, or by video link or telephone, if such facilities are available.

## **Telephone advice before application forms are signed**

12.19 You may only include in your Case costs time spent giving advice to a Client over the telephone before that Client has signed the application form where:

- (a) the Client meets the Financial Eligibility Test and you are satisfied that the Sufficient Benefit Test is met; or
- (b) the Client subsequently signs the CDS1 and CDS2, or CDS1 and CDS3 application forms and is financially eligible.

12.20 If you provide advice under Paragraph **12.19** you must send the application forms to your Client, after you have given the advice, to be signed and returned to you.

12.21 You must not make any Claim under this part of the Contract if your Client has not signed the application forms or has been properly determined by you as not being financially eligible.

12.22 You must not make a Claim under this Contract in circumstances where you provide ad hoc telephone advice to a Client on an issue which develops no further or is resolved during the course of that telephone call, or is resolved by writing an ad hoc piece of correspondence in the circumstances outlined in Paragraph **12.70(c)** below.

## **Commencing a Matter under this Part of the Contract**

12.23 When this Contract commences, subject to Paragraph **12.5**, you are devolved the power to self grant Legal Aid in Matters under this part to the Contract, subject to the Matter passing the Sufficient Benefit Test and the Client being financially eligible.

12.24 We reserve the right to introduce a system of limiting the number of New Matter Starts which can be commenced in relation to Treatment Cases under this part of the Contract to the number of Matter Starts allocated to you in your Schedule.

12.25 The Paragraphs under the heading “Limiting New Matter Starts” may come into effect between 1 July 2011 and 1 July 2012, but will only come into effect if we give you at least three months notice. Unless and until such notice is given, Paragraphs **12.26 to 12.32** are not in force.

## **Limiting New Matter Starts in Treatment Cases**

12.26 By summer 2011, we will publish a report on the post-implementation review of the changes being introduced under this part of this Specification in response to the Prison Law Funding Consultation.

12.27 If the volume control measures which have been introduced into this Contract do not prevent the number of Treatment Cases in Prison Law from rising, we will introduce a system for allocating on your Schedule a capped number of New Matter Starts to limit the number of Treatment Cases you are able to Claim for under this Part of the Contract.

- 12.28 For the avoidance of doubt, Sentence Cases, Disciplinary Cases and Parole Board Cases are not within the system for limiting New Matter Starts.
- 12.29 In deciding whether to operate this Matter Start System, we will take into account first the volume of Matters funded in the first six months of the Contract and secondly, any relevant budgetary determination made by the Lord Chancellor within the meaning of s18(2) of the Act.
- 12.30 Under such a system, we will issue you with a new Schedule, which will specify how many New Matter Starts you may commence in a given period, and unless we authorise an additional number of Matters to you, you will not be able to claim payment for more Treatment Cases than the number specified on your Schedule.
- 12.31 If the Paragraphs under “Limiting New Matter Starts” are brought into force, then from their commencement date and the Schedule End Date, you may only commence New Matters Starts in Treatment Cases by using the Matter Starts that we have allocated to you in your Schedule.
- 12.32 You may apply for permission from us to start a Treatment Case if you have reached the maximum number of Matter Starts authorised on your Schedule only if the application is from a Client suffering from severe mental health or severe learning difficulties, and the case raises a serious human rights issue. Otherwise, you may not commence any new Treatment Cases when you have reached the maximum number of Matter Starts authorised on your Schedule.

### **General Provisions on Starting a New Matter**

- 12.33 Advice and Assistance or Advocacy Assistance must be allocated an individual Matter appropriately and in accordance with the provisions set out here.
- 12.34 These provisions govern when a Matter may be commenced and when it is legitimate to commence more than one Matter for one Client. Where Advice and Assistance is paid for under a Fixed Fee, and Advocacy Assistance is paid for under a Standard Fee, you must ensure that additional Matters are not artificially created or used for work which should in accordance with these Paragraphs be carried out under a single Matter. Conversely, you must not include clearly unrelated work to a single Matter.
- 12.35 You must not begin more than one Sentence Case, or more than one Parole Board Case for a Client at any one time. If you commence a Sentence Case and a Parole Board Case concurrently, you must claim for each Matter separately.
- 12.36 If you commence a Treatment Case, or a Disciplinary Case for a Client, and are subsequently instructed by that Client on an unrelated and distinct Treatment Issue, or a new, unrelated and distinct Disciplinary Case, you may commence a concurrent Matter. You must set out on a file note on the later Matter your reasons to justify commencing the second case.

## **Where you provide Advice and Assistance and then Advocacy Assistance in a Disciplinary Case or in a Parole Board Case**

- 12.37 Where you are instructed on a Disciplinary Case or a Parole Board Case in circumstances where it is clear that there is going to be an oral hearing, you must start the Case as Advocacy Assistance.
- 12.38 Where you are instructed on a Disciplinary Case or a Parole Board Case in circumstances where it is not clear that there is going to be an oral hearing, you must start the Case on the basis that you will be providing Advice and Assistance. If that Matter is subsequently listed for an oral hearing, then you must claim the Advice and Assistance costs at that point, and then start a fresh Advocacy Assistance Matter.

## **Matter Start Boundaries**

- 12.39 Each new Matter must be the subject of a separate application form. You must identify, and record on the appropriate Case file, any point at which the work, which you are performing for any Client, becomes two separate matters and you begin a separate Matter.
- 12.40 Where the Client raises several issues at the first meeting, a single Matter must be commenced to identify the issues and to provide general, preliminary advice. If one legal issue is identified then the original, single Matter must be used for the provision of further Advice and Assistance.
- 12.41 For the avoidance of doubt, the above Paragraphs on Matter Start Boundaries apply irrespective of whether you purport to limit your retainer to only part of the stages, aspects or issues of a matter or matters that should properly be covered by a single Matter.

## **Travel and waiting costs**

- 12.42 You may only Claim for the mileage or the actual cost of public transport for travel as a Disbursement (but not travelling or waiting time, because this is included in the Fixed Fee or Standard Fee applicable to that Unit of Work) to visit a Client who is in prison.
- 12.43 Waiting Time only counts towards your costs to determine whether or not you have reached the Exceptional Threshold in a Case payable by Fixed Fee, or to determine whether you are able to claim the Lower or Higher Standard Fee, or whether your Case is claimable as a Non-Standard Fee.
- 12.44 Travel Time may only be claimed separately on an Exceptional Case or a case in which you are claiming a Non-Standard Fee. Travel costs must not be included in your costs to determine whether a claim is assessable as an Exceptional Case (in Advice or Assistance) or a Non-Standard Fee (in Advocacy Assistance).
- 12.45 Where a Case has become assessable as an Exceptional Case, you may only claim one-hour travel on each journey at the hourly rate specified in this Contract.

12.46 The only circumstance where you may Claim more than one hour travel where a Case has become assessable as exceptional is if you commence a Case for a Client, who is during that Case moved to another prison establishment which is further away from your Office. In these circumstances, you may claim a maximum of three hours travel time on each journey (making a total of six hours in any one day).

12.47 Paragraph **12.46** above only applies if the Client moves at a time when your Costs on that Matter have already reached the Exceptional Threshold.

### **Disbursements**

12.48 You must apply to us for Prior Authority in accordance with this Specification, using Form CDS4 before incurring a disbursement over £500.

12.49 On any Matter, unless you can clearly demonstrate sufficient benefit, you must not instruct more than one expert to provide a report on the same issue. We accept that there may be Sufficient Benefit if more than a year has elapsed, but in any Matter where an additional expert report is sought, your application for Prior Authority must set out clear justification on why you consider an additional report is necessary.

### **Instructing Agents**

12.50 You may instruct a Solicitor or a Representative working as an Agent to carry out work on your behalf, provided that:

- (a) you assume total responsibility for ensuring that their work is properly supervised and complies with all the terms of this Contract;
- (b) you are able properly to supervise their work;
- (c) you are responsible for all payments to them in respect of this work; and
- (d) the use of such an Agent does not increase the costs payable by us.

This Paragraph is specifically aimed at assisting you to take instructions from Clients who are in prisons which are a distance from your Office.

### **Instructing Counsel (including Solicitors with court advocacy rights)**

#### **Advice and Assistance**

12.51 If you instruct Counsel to advise your Client under Advice and Assistance, you must arrange to agree Counsel's fees and pay Counsel out of the Fixed Fee.

12.52 Counsel's fees under Advice and Assistance do not count as a Disbursement unless the case is claimable as an Exceptional Case. Counsel's fees must not be taken into account when you determine whether a Case is claimable as an Exceptional Case.

12.53 If Counsel is instructed to provide an advice under Advice and Assistance and the case reaches the Exceptional Threshold you may, when claiming your fees on the basis of Hourly Rates, claim payment from us of Counsel's fees only as if

such fees were a Disbursement incurred by you. However, in that situation the amount claimed from us in respect of Counsel's fees must not exceed the sum which would have been payable by us if you had spent the same amount of time in providing the advice.

12.54 Assessment of Counsel's fees will be subject to reasonableness.

### **Advocacy Assistance**

12.55 Under Advocacy Assistance, Counsel's fees are included within and paid from the Standard Fee. You must agree a fee with Counsel.

12.56 If the case exceeds the Higher Standard Fee Limit, and is claimable as a Non-Standard Fee Case, the costs are assessed by us, and the work is claimed by you using your contractual hourly rates (as though Counsel were instructed by you as an Agent). This is the same system, which applies where Counsel is instructed on an Unassigned basis under a Representation Order in the magistrates' court.

12.57 You must not make any Claim for time spent accompanying Counsel at a Parole Board Hearing, or a Disciplinary Hearing.

12.58 You must arrange the direct payment of Counsel's agreed fee in accordance with the rules specified in this Specification.

12.59 When instructing Counsel, you should inform him or her of the payment rates and ensure that Counsel's fee note contains a breakdown of the time claimed at the appropriate rates specified in the **Payment Annex** to this Contract.

### **Previous Advice and Assistance**

12.60 You may not Claim for Advice and Assistance or Advocacy Assistance provided to a Client who has received Advice and Assistance or Advocacy Assistance for the same Matter from another Solicitor within the six months preceding the application, except where:

- (a) There is a gap in time and circumstances have changed materially between the first and second occasions when the Advice and Assistance, or Advocacy Assistance was sought; or
- (b) the Client has reasonable cause to transfer from the first Provider; or
- (c) the first Provider has confirmed to you that he or she will be making no Claim for payment for the Advice and Assistance or Advocacy Assistance given.

When providing Advice and Assistance in the circumstances set out in this Paragraph you must record the justification for doing so on the file. For the avoidance of doubt, this power is a Devolved Power.

12.61 If a Client changes Solicitor within the same organisation or a Solicitor moves to work for a different Provider and continues to advise the Client, then there will not have been Advice and Assistance from 'another Provider' for the purposes of Paragraph **12.60** but the second or subsequent Provider may not Claim for Advice and Assistance in addition to the first Provider. However, if the Client

instructs another Provider and the same Solicitor does not continue to provide Advice and Assistance to the Client, this will be Advice and Assistance from 'another Provider' under Paragraph **12.60**.

12.62 You cannot Claim for Advice and Assistance under the terms of any of the exceptions contained in Paragraph **12.60** where:

- (a) the Client simply disagrees with the first advice and wants a second opinion;
- (b) there is less than six months between the first and second occasions when the Advice and Assistance is sought and no material change of circumstances has occurred;
- (c) the change requested is from a second to a third Provider (unless exceptionally there is good reason for a further change);
- (d) there is no reasonable explanation for the Client seeking further Advice and Assistance from a new Provider.

12.63 Where Advice and Assistance is provided in contravention of Paragraph **12.60**, the work undertaken cannot be claimed for or paid as Contract Work.

12.64 If the Client has received previous Advice and Assistance but you are permitted to provide further Advice and Assistance under Paragraph **12.60**, you must assign a new UFN and must make a note on the file to confirm that Advice and Assistance has been given previously by another Provider and a brief explanation for commencing a new matter for that Client. In addition, the Client must complete a fresh application form and must meet the Qualifying Criteria.

12.65 You must ascertain whether previous Advice and Assistance has been provided in the same Matter by making reasonable enquiries of your Client at the earliest opportunity. If the Client has received Advice and Assistance, and the circumstances at **12.62(a) to (d)** apply, you must either provide Advice and Assistance and not make a Claim for it, or require the Client to contact the Provider who provided the original Advice and Assistance.

### **Further instructions after a Matter ends or a Claim has been submitted**

12.66 Where you have previously provided Advice and Assistance (or Advocacy Assistance) to a Client in relation to a Matter, and you have already claimed a Standard Fee for the Matter in a Claim submitted to us in accordance with the terms of this Specification, then any further Advice and Assistance provided to the Client in relation to the same Matter will normally be assumed to be covered by the Standard Fee already claimed.

12.67 If you have completed a Matter, whether under this Specification or any previous Specification, you may not subsequently commence a Matter in relation to the same problem. The only exceptions are where:

- (a) a period of at least six months has elapsed since you submitted your claim for that Matter; or
- (b) there has been a material development or change in the Client's instructions; and

- (c) a period of at least three months has elapsed since you submitted your claim for that Matter and have claimed as a result of your Client failing to give instructions; or
- (d) the Advice and Assistance provided on the problem formed only a minor part of the previous Matter, such that the problem did not qualify as a separate and distinct legal problem.

12.68 For the avoidance of doubt, for the purposes of Paragraph **12.67** the fact that the Client has failed to give instructions shall not constitute or give rise to a change in the Client's instructions.

12.69 Where a Matter has been closed and has been claimed for but further work is necessary and a separate Matter is not justified:

- (a) the work already undertaken and the further work should be taken into account in determining whether the Matter is an Exceptional Case that escapes from the Fixed or Standard Fee provisions. If we agree to pay the matter as an Exceptional Case, we will take into account any payments already made by way of the Standard Fee;
- (b) you may claim further disbursements, subject to prior approval by us, as part of the Matter where appropriate;
- (c) where the Matter has already been paid as an Exceptional Case, the further work is payable on an Hourly Rate basis, subject to Assessment;
- (d) unless the matter is accepted as an Exceptional Case, the further work carried out will be included in any calculation of average costs per Matter.

12.70 A new Matter is not justified in the following circumstances:

- (a) Providing information to Clients or to other persons contacting your organisation on behalf of Clients.
- (b) Supplying a new Provider with a former Client's file or a copy, or information about the circumstances of termination of the retainer.
- (c) Writing brief ad hoc correspondence on a one-off matter at the request of the Client, which does not achieve any tangible result or results in no further action.

12.71 For the avoidance of doubt, where Advice and Assistance or Advocacy Assistance has already been carried out for a Client then a separate Matter would not be justified in the following circumstances:

- (a) Advice and Assistance in relation to an issue in a Matter on which Advice and Assistance has already been provided.
- (b) Advice and Assistance in relation to a review, or an appeal in a Matter on which Advice and Assistance has already been provided.

- (c) If a Client seeks advice as to whether (s)he should change Provider from a Provider already providing Advice and Assistance on a Matter within this Specification. The provisions from Paragraphs **12.33** onwards under the heading “General Provisions on Starting a New Matter” should be applied before any work is provided under a new Matter Start.

12.72 Any work undertaken on a case by an Agent on your behalf will form part of the same Matter as the parts of the Case handled by you.

12.73 You must not provide Advice and Assistance (or Advocacy Assistance) on a Matter where you have previously provided it. An exception to this rule is where there are substantive issues outstanding from the first occasion when Advice and Assistance (or Advocacy Assistance) was provided (this will often be the case where the Client has simply failed to give instructions for a period) or there has been a material development or change in the Client’s circumstances such that further Advice and Assistance is now required.

12.74 If you provide further Advice and Assistance under Paragraphs **12.67** or **12.69** then:

- (a) the Client must complete a further application form and you must establish that any Qualifying Criteria are met, where relevant;
- (b) your case file must make reference to any previous closed file and the files must be cross-referenced and retrievable for Audit purposes;

you must assign a new UFN to the new Matter.

## **Payment**

### **Advice and Assistance**

12.75 Advice and Assistance under this part of the Contract is paid as a Fixed Fee. If your profit and waiting time costs (calculated using hourly rates), but not travelling time, exceed the Fixed Fee by a specified amount (the Exceptional Threshold), your case is claimable as an Exceptional Case where your costs will be paid following Assessment by us.

### **Advocacy Assistance**

12.76 Advocacy Assistance for Disciplinary Cases and Parole Board Cases under this part of the Contract is paid under a Standard Fee scheme only which operates as follows:

- (a) If your profit costs and waiting time costs (calculated by reference to Hourly Rates), but not travelling time, are within the Lower Standard Fee Limit, then you may Claim the Lower Standard Fee.
- (b) If your profit costs and waiting time costs (calculated by reference to Hourly Rates), but not travelling time, exceed the lower Standard Fee Limit, you are entitled to claim the Higher Standard Fee. There is an element of Travel Time modelled into the Standard Fees, and so time spent travelling may not be included in your costs to determine whether you have exceeded the Lower Standard Fee Limit.

- (c) If your profit costs and waiting time costs (calculated using hourly rates), but not travelling time exceed the Higher Standard Fee Limit, your case is claimable as an Non-Standard Fee Case where the costs will be paid following Assessment by us.

### **Rules on claiming**

12.77 A single Claim must be submitted for all work undertaken for a Client in the same Matter except where a Claim has been submitted already in the same Matter because Paragraph **12.38** applies. The Claim must be for one or more of the Units of Work within the Prison Law Class of Work (as set out in this part of the Contract).

12.78 A Claim may be submitted when:

- (a) the Matter has concluded;
- (b) it is known that no further work will be undertaken for the Client in the same Matter;
- (c) it is unclear whether further work will be required or not and a minimum of three months has elapsed since the last work in the Matter was undertaken.

## **Treatment Cases – Advice and Assistance**

### **Scope**

12.79 This Unit of Work concerns the provision of advice to a Client on legal issues relating to that Client's treatment in the prison system (and not issues relating to a Client's sentence). It may only be undertaken for an eligible person who is a prisoner (either post conviction or on remand and including prisoners who are released on licence or parole).

### **Qualifying Criteria**

12.80 The Client must be financially eligible as assessed under the CDS (General) (No. 2) Regulations 2001 before Advice and Assistance may be given under this Unit of Work.

12.81 The Sufficient Benefit Test (as set out under Paragraph **12.6**) must be satisfied in order to provide Advice and Assistance on a Treatment Case under this Unit of Work.

12.82 Treatment Cases which have no real chance of success, which are of an objectively trivial nature or which are not part of a bona fide complaint will not be paid for as Contract Work.

12.83 Cases, which have minimal benefit or impact on the Client, do not satisfy the Sufficient Benefit Test and must not be claimed by you as Contract Work.

12.84 In all cases where Advice and Assistance is granted on a Treatment Case, there must be a file note setting out how the Sufficient Benefit Test has been satisfied on that Matter. This will be checked on Audit.

12.85 In some Matters, it will be necessary to provide some initial Advice and Assistance in order to determine whether there is likely to be any benefit to the Client, however, once it is apparent that the Sufficient Benefit Test is not (or no longer) satisfied then the Advice and Assistance must cease and the Client must be so advised.

12.86 We will not fund a Treatment Case relating to a Matter that did not raise a significant legal or human rights issue. Objectively trivial or minor complaints about a Client's treatment in the prison system are outside the scope of this Contract and will not be funded.

12.87 We will not ordinarily expect to fund a Treatment Case, which concerns a complaint by a Client about his or her living conditions in Prison. Such cases are suitable to be resolved through the prison internal complaints mechanism, and prisons and probation ombudsman.

12.88 Cases, which concern a complaint by the Client about his living conditions in Prison are outside the scope of this Contract if they are suitable to be resolved through the prison internal complaints mechanism, and prisons and probation ombudsman, unless the Client has a severe mental health problems or severe learning difficulties such that, even with the help of other prisoners or staff, he or she is not able adequately to formulate his or her complaint effectively.

- 12.89 If you assist a Client who falls within the category outlined in Paragraph **12.88**, your file note setting out how the Sufficient Benefit Test has been satisfied must also explain why, in your view, it would be practically impossible for the Client to use the internal complaints process without some input from you to help formulate his or her complaint.
- 12.90 Merely advising a Client to use the prison complaints system must not, of itself, be claimed as a New Matter under this Contract.
- 12.91 Complaints about the following are suitable to be dealt with under the prison internal complaint process and (unless one of the criteria under Paragraph **12.88** is met) must not be funded unless there is an issue which makes that Matter have a serious human rights dimension:
- (a) entitlements to rights and privileges;
  - (b) issues arising out of correspondence (except legally privileged correspondence);
  - (c) food (where there is no religious dietary requirement involved);
  - (d) exercise;
  - (e) lost or damaged property;
  - (f) issues arising out of the Incentives and Earned Privileges Scheme (IEPS) (save where an IEP Warning could have a serious impact on parole or progression).

### **Advice and Assistance on issues concerning Treatment (but which are not complaints)**

- 12.92 Issues concerning a Client's treatment, which are not suitable for raising by way of a complaint, are also funded under this part of the Contract (subject to the Sufficient Benefits Test being satisfied) and may be claimed for in accordance with the Guidance.
- 12.93 Advice and Assistance must not be provided on any Matter under this Part of the Contract if the issue has potential for becoming a civil claim resulting in damages.
- 12.94 If a Matter under this Part of the Contract concerns a public law challenge against a decision made by a prison, and which remains unresolved after you have undertaken sufficient work, you must record on file whether it would be appropriate for a public law challenge to be funded under the Associated CLS part of this Specification.

### **Payment**

- 12.95 The Fixed Fee that applies to Advice and Assistance given on a Treatment Case is specified in the **Payment Annex** to this Specification and must be claimed for accordingly.

- 12.96 For cases in which your costs exceed the fixed fee for this work by a specified amount (the Exceptional Threshold), the work is claimable as an Exceptional Case which is subject to assessment, and you must Claim for work undertaken within this Class of Work at the hourly rates which are specified in the **Payment Annex** to this Specification.
- 12.97 You must not claim a Fixed Fee under this Unit of Work on a case, which has involved fewer than eight units of time.

## **Sentence Cases – Advice and Assistance**

### **Scope**

12.98 This Unit of Work only covers Advice and Assistance to a Client on legal issues arising out of his or her sentence, and on legal issues concerning a Client's progress through the prison system (and not on legal issues concerning a Client's treatment in the prison system). It may only be undertaken for an eligible person who is a convicted prisoner or who is released on licence or on parole. This Unit of Work does not cover any work in connection with an application to court to vary, discharge or appeal against a sentence or order made in criminal or Prescribed Proceedings.

### **Qualifying Criteria**

12.99 The Client must be financially eligible as assessed under the CDS (General) (No. 2) Regulations 2001 before Advice and Assistance may be given under this Unit of Work.

12.100 The Sufficient Benefit Test (as set out under Paragraph **12.6**) must be satisfied in order to provide Advice and Assistance under this Unit of Work.

12.101 In Sentence Cases, the Sufficient Benefit Test is capable of being satisfied only if the work done on that Client's behalf is in connection with his or her progression through the prison system, or concerns issues which are directly relevant to that Client's sentence, such as his or her categorisation, accessing offending behaviour courses, or progress towards release. A non-exhaustive list of cases which could potentially pass the Sufficient Benefit Test is as follows:

- (a) Indeterminate/life sentence planning;
- (b) Determinate sentence planning;
- (c) Challenging adverse decisions in relation to sentence calculations (although not within 6 months of conviction if the Client was represented in the Crown Court under a Representation Order);
- (d) Challenging adverse decisions in relation to licence conditions;
- (e) First categorisation and allocation arising from initial sentence;
- (f) Category A reviews;
- (g) Security categorisations (excluding Category A reviews);
- (h) Re-categorisation;
- (i) Re-setting of minimum terms;
- (j) Accessing offending behaviour courses ;

- (k) Legal issues arising out of:
  - (i) Home Detention Curfew (HDC) decision;
  - (ii) Release on Early Conditional Licence (ECL);
  - (iii) Release on temporally licence; and
  - (iv) The Early Removal Scheme;
- (l) Written representations to challenge a decision to transfer a Client to a Close Supervision Centres under Prison Rule 46;
- (m) Matters, which concern a formal procedure, which necessarily involve consideration of documentation and the making of written representations.

12.102 Making representations to the Independent Safeguarding Authority against the inclusion of a Client on the children's barred list or adult's barred list is not within the scope of this Contract.

12.103 Advice on recall to Prison following breach of licence is not within the scope of this Unit of Work, but may be funded as a Parole Board Case in appropriate circumstances as outlined that Unit of Work under Paragraph **12.123**.

12.104 Advice and Assistance must not be given to a Client within six months of the date of his sentence hearing if the issue relates solely to that Client's sentence calculation. Such advice is expected to be given to a Client by his or her Provider who represented him or her at the time of his sentencing hearing with the benefit of a Representation Order.

## **Payment**

12.105 The Fixed Fee, which applies for Advice and Assistance given on a Sentence Case is as specified in the **Payment Annex** and must be claimed for accordingly.

12.106 For cases where your profit costs exceed the applicable Exceptional Threshold amount the work is claimable as an Exceptional Case, which is subject to Assessment, and you must Claim for work undertaken within this Class of Work at the rates set out in the **Payment Annex**.

12.107 You must not claim a Fixed Fee under this Unit of Work on a case, which has involved fewer than eight units of time.

## **Disciplinary Cases – Advice and Assistance or Advocacy Assistance**

### **Scope**

- 12.108 This Unit of Work covers Advocacy Assistance (or Advice and Assistance) in proceedings before a Prison Governor or other prison authority (the Independent Adjudicator) and may only be undertaken for eligible persons who are prisoners (either post conviction or on remand but not including prisoners who are released on licence or parole).
- 12.109 You may only grant Advocacy Assistance under this Unit of Work using Devolved Powers in accordance with the Qualifying Criteria below for disciplinary proceedings before Prison Governors or other prison authorities (the independent adjudicator).
- 12.110 If the Prison Governor or other prison authority has granted permission for the prisoner to be represented the defendant is entitled to Advocacy Assistance subject to meeting any other Qualifying Criteria set out below.
- 12.111 If the Prison Governor or other prison authority has not granted permission for Representation, you must not devolve the grant of Advocacy Assistance. If you consider the Sufficient Benefit Test to be met, you may only provide Advice and Assistance (provided there is justification of the benefit on an accompanying file note), which would entitle you to claim the Advice and Assistance Fixed Fee.

### **Qualifying Criteria**

- 12.112 The Client must be financially eligible as assessed by you under the CDS (General) (No. 2) Regulations 2001 before Advice and Assistance or Advocacy Assistance may be given under this Unit of Work.
- 12.113 The Sufficient Benefit Test (as set out in Paragraph **12.6**) must be satisfied in order to provide Advice and Assistance or Advocacy Assistance under this Unit of Work. In Disciplinary Cases, the Sufficient Benefit Test will not be satisfied in proceedings where there is no risk that the Client will have additional days added to his or her sentence.
- 12.114 For indeterminate or life sentence prisoners, the Sufficient Benefit Test is capable of being satisfied where there is a real likelihood that as an alternative to an adjudication, they will be penalised in a way which is likely to have a damaging impact on a future parole review. You must set out on a brief file note the reasons for acting on behalf of an indeterminate or life sentence prisoner in a Disciplinary Case before granting the application for funding.
- 12.115 You must apply a notional 'interests of justice test', in particular, whether,
- (a) the Client would, if any matter arising in the proceedings is decided against him, be likely to have additional days added to his sentence;
  - (b) the determination of any matter arising in the proceedings may involve consideration of a substantial question of law;

- (c) the Client may be unable to understand the proceedings or to state his own case;
- (d) the proceedings may involve the tracing, interviewing or expert cross-examination of witnesses on behalf of the individual;
- (e) there would be a negative impact on a subsequent parole review or categorization decision.

12.116 Advocacy Assistance under this Unit of Work must not be provided if:

- (a) it appears unreasonable that approval should be granted in the particular circumstances of the Matter or Case;
- (b) permission to be legally represented has not been granted by a Governor or other prison authority, where appropriate (in which case you may only assist the Client under Advice and Assistance by preparing written representations on the Client's behalf).

12.117 Advocacy Assistance under this Unit of Work must only be provided where:

- (a) permission for legal representation is granted by the Governor or prison authority; or
- (b) you have set out in a file note how the Sufficient Benefit Test has been met.

## **Payment**

12.118 The Fixed Fees for Advice and Assistance given on a Disciplinary Case is as specified in the **Payment Annex** to this Specification and must be claimed for accordingly.

12.119 For cases where your profit costs exceed the applicable Exceptional Threshold amount the work is claimable as an Exceptional Case, which is subject to Assessment, and you must Claim for work undertaken within this Class of Work at the rates set out in the **Payment Annex** to this Specification.

12.120 You must not claim a Fixed Fee under this Unit of Work on a case, which has involved fewer than 8 Units of work.

12.121 The Standard Fees, which may be claimed for Advocacy Assistance given on a Disciplinary Case are as, specified in the **Payment Annex** to this Specification and must be claimed for accordingly.

12.122 To determine whether you may claim the Lower Standard Fee, the Higher Standard Fee or whether your costs have exceeded the Exceptional Limit you must calculate your costs using the rates specified in the **Payment Annex** to this Specification.

## **Parole Board Cases – Advice and Assistance or Advocacy Assistance**

### **Scope**

12.123 This Unit of Work covers Advice and Assistance or Advocacy Assistance and may only be undertaken for eligible persons who are convicted prisoners and who are the subject to proceedings before the Parole Board or who require advice and assistance regarding representations in relation to a mandatory life sentence or other parole review, including breach of licence conditions and recall to prison.

### **Qualifying Criteria**

12.124 The Client must be financially eligible as assessed under the CDS (General) (No. 2) Regulations 2001 before Advice and Assistance may be given under this Unit of Work.

12.125 The Sufficient Benefit Test (as set out under Paragraph **12.6**) must be satisfied in order to provide Advice and Assistance or Advocacy Assistance under this Unit of Work.

12.126 The Sufficient Benefit Test may only be satisfied on a pre-tariff review for a Category A if such representation is clearly stated to be in order to protect that Client's position, or to prevent a detrimental effect on a subsequent Parole Board Review.

12.127 In all Parole Board cases where Advice and Assistance or Advocacy Assistance is self-granted, you must ensure that there is a file note recording how the Sufficient Benefit Test has been satisfied on that matter. This will be checked on Audit.

12.128 Parole Board Cases which are determined on the papers, are only funded under Advice and Assistance at the same Fixed Fee as Treatment and Sentence Cases.

### **Recall to prison for breach of licence conditions**

12.129 You may only provide Advice and Assistance to Clients who are recalled to Prison for breaching the conditions of their licence. If representations are submitted which result in the Parole Board convening an oral hearing at which you represent the Client, then the Matter is claimable as Advocacy Assistance. If having submitted written representations, the Parole Board do not convene an Oral hearing, you may only claim the case as Advice and Assistance Fixed Fee (or Exceptional Case).

### **Payment**

12.130 The Fixed Fee which applies for Advice and Assistance given on a paper based Parole Board Hearing is as specified in the **Payment Annex** to this Specification and must be claimed for accordingly.

- 12.131 For cases where your profit costs are above the Exceptional Threshold for this work, the work is claimable as an Exceptional Case, which is subject to Assessment, and you must Claim for work undertaken within this Class of Work at the rates set out in the **Payment Annex** to this Specification.
- 12.132 You must not claim a Fixed Fee under this Unit of Work on a case, which has involved fewer than eight units of time.
- 12.133 The Standard Fees apply for Advocacy Assistance given on a Parole Board Case are as specified in the **Payment Annex** to this Specification and must be claimed for accordingly.
- 12.134 To determine whether you may claim the Lower Standard Fee, the Higher Standard Fee or whether your costs have exceeded the Exceptional Limit you must calculate your costs using the rates specified in the **Payment Annex** to this Specification.

## **13 ASSOCIATED CLS WORK**

### **Legal Help and Legal Representation – judicial review or habeas corpus**

#### **Scope**

13.1 This Unit of Work concerns Legal Help or Legal Representation for actual or proposed proceedings concerning public law challenges to the acts, omissions or decisions of public bodies by way of judicial review (including under the Human Rights Act 1998) or habeas corpus, arising from any matter within the Crime Category.

13.2 This Specification provides you with authority to undertake such work with no limitation on the number of Matter Starts. This work will count as either Controlled Work or Licensed Work within the meaning of the Funding Code and the relevant provisions of the civil Contract apply except insofar as this Specification provides otherwise. For the purposes of this Paragraph, the relevant civil Contract will be the one in force at the date you commence the civil matter.

13.3 You must apply the Funding Code Criteria when undertaking work under this part of the Contract.

#### **Qualifying Criteria**

13.4 In order to provide Legal Help or Legal Representation under this Unit of Work, the relevant criteria in the Funding Code must be satisfied.

13.5 In order to provide Legal Representation, a Client must be granted a civil funding Certificate in accordance with the Funding Code. This may include the grant of an emergency Certificate under your Devolved Powers.

13.6 To provide Legal Help or Legal Representation under this Unit of Work the Client must meet the applicable Financial Eligibility Test.

#### **Application Procedures**

13.7 You must ensure that your Client completes the relevant civil application forms. To apply for representation under a Legal Aid Certificate, the Client must complete the CLS APP1 and CLS MEANS 1 forms.

#### **Rules on claiming**

13.8 A single Claim for Legal Help provided under this Unit of Work must be submitted for all work undertaken for the same Client in the same Matter, except where a Claim has been submitted already in the same Matter because Paragraph **13.9(c) or (d)** below applies.

13.9 A Claim for Legal Help may only be submitted when:

(a) the Matter has concluded; or

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- (b) it is known that no further work will be undertaken for the Client in the same Matter; or
- (c) it is unclear whether further work will be required or not and a minimum of one month has elapsed since the last work in the Matter was undertaken; or
- (d) a Legal Aid Certificate is granted for Representation for the same Client arising from the same Matter.

13.10 A Claim must not be made under this Unit of Work where a human rights issue is being argued as an integral part of existing Criminal Proceedings and a Claim has been, or it is known that it will be, made for magistrates' court Representation (or for Representation in the Crown Court, Court of Appeal or Supreme Court) for any Matter forming part of the same Case.

13.11 A Claim should be submitted for Legal Help using the Contract Report Form and procedures specified for work under this Specification.

13.12 A Claim must be submitted for Legal Representation in accordance with the rules applicable to civil Matters under the civil Contract, using the procedures and claim forms specified for civil Matters under that Contract.

13.13 The procedures under this Specification for the Assessment of remuneration for Representation under this Unit of Work are the same as those contained in the Civil Legal Aid (General) Regulations 1989 (as amended) and prior authority may be applied for and granted in accordance with the civil Specification.

13.14 Claims for Civil Legal Aid Representation in the High Court under this Unit of Work must be made in accordance with the rules applicable under the civil Specification.

13.15 Where an application for a Legal Aid Certificate for Associated CLS Work has been made to us, no further work can be claimed under Legal Help unless there is likely to be a delay before the application is determined or further work needs to be done without which the Client's position would be prejudiced or there is an ongoing Criminal Investigation relating to that Matter. You must note the reasons on the file in such circumstances. You must not undertake more than two hours work on making the application for Legal Help.

### **Limits on Claims**

13.16 Subject to any extension granted in accordance with this Specification the rates set out in the civil Contract apply to this Unit of Work.

### **Payment**

13.17 The applicable Legal Help Fixed Fee is the Public Law Category Fixed Fee.

13.18 You must claim for work undertaken in the Associated CLS Class of Work at such rates as are specified in the Payment Annex of the civil Specification.

## **Legal Help and Legal Representation – Proceeds of Crime Act 2002**

### **Scope**

- 13.19 This Unit of Work may only be undertaken for a Client within, and funded by, the CLS on civil proceedings under the Proceeds of Crime Act 2002. This Specification provides you with authority to undertake such work with no limitation on the number of Matter Starts. This work will count as either Controlled Work or Licensed Work within the meaning of the Funding Code and the relevant provisions of the civil Contract apply except insofar as this Specification provides otherwise. For the purposes of this Paragraph, the relevant civil Contract is the one in force at the date you commence the civil Matter.
- 13.20 If your Client requires legal assistance to respond to the Crown Court under the terms of a restraint order (prior to being charged with an offence) to serve a witness statement of means and assets, this work is fundable under Legal Help under this Unit of Work.
- 13.21 You may only apply for civil Legal Aid on behalf of a Client who is subject to a restraint order under s41 of the Proceeds of Crime Act 2002 to make an application to vary or discharge that restraint order in circumstances where the Client is not charged with a criminal offence or the subject of Criminal Proceedings.
- 13.22 If your Client is subsequently charged with a criminal offence, civil Legal Aid will cease to be available because a Representation Order applied for and granted in the Criminal Proceedings will extend to any work done in respect of the restraint proceedings, as they are incidental to the substantive Criminal Proceedings.
- 13.23 You may only apply for civil Legal Aid in respect of forfeiture proceedings under Part 5 of the Proceeds of Crime Act 2002 (forfeiture of cash in the magistrates' court), subject to your Client passing the means and merits test to be eligible for civil Legal Aid.
- 13.24 You must refer to Chapter 23 of the Funding Code: Guidance (in Volume 3 of the LSC Manual) in relation to this Unit of Work. This sets out scope of CLS funding in Proceeds of Crime Act matters, and procedures for applying for CLS Funding.

### **Qualifying Criteria**

- 13.25 In order to provide Legal Help or Legal Representation under this Unit of Work, the relevant criteria in the Funding Code must be satisfied.
- 13.26 In order to provide Legal Representation, a Client must be granted a civil funding Certificate in accordance with the Funding Code.
- 13.27 To provide Legal Help or Legal Representation under this Unit of Work the Client must meet the Financial Eligibility Test set out in Regulations.

## Applications Procedures

13.28 You must ensure that your Client completes the relevant civil application forms. To apply for Representation under a Legal Aid Certificate, the Client must complete the CLS APP1 and CLS MEANS 1 forms.

## Rules on claiming

13.29 A single Claim for Legal Help provided under this Unit of Work must be submitted for all work undertaken for the same Client in the same Matter, except where a Claim has been submitted already in the same Matter because Paragraph **13.30(c) or (d)** below apply.

13.30 A Claim for Legal Help may only be submitted when:

- (a) the Matter has concluded; or
- (b) it is known that no further work will be undertaken for the Client in the same Matter; or
- (c) it is unclear whether further work will be required or not and a minimum of one month has elapsed since the last work in the Matter was undertaken; or
- (d) a Legal Aid Certificate is granted for Representation for the same Client arising from the same Matter.

13.31 A Claim must not be made under this Unit of Work where a human rights issue is being argued as an integral part of existing Criminal Proceedings and a Claim has been, or it is known that it will be, made for magistrates' court Representation (or for Representation in the Crown Court, Court of Appeal or Supreme Court) for any Matter forming part of the same Case.

13.32 A Claim must be submitted for Legal Help using the Contract Report Form and procedures specified for work under this Specification.

13.33 A Claim must be submitted for Legal Representation in accordance with the rules applicable to civil Matters under the civil Contract, using the procedures and claim forms specified for civil Matters under the civil Contract in force at the time.

13.34 The procedures under this Specification for the Assessment of remuneration for Representation under this Unit of Work are the same as those contained in the Civil Legal Aid (General) Regulations 1989 (as amended) and prior authority may be applied for and granted in accordance with the provisions of the civil Specification.

13.35 Claims for Representation in the High Court under this Unit of Work must be made in accordance with the rules applicable under the civil Specification.

13.36 Where an application for a Certificate for Associated CLS Work has been made to us, no further work must be claimed under Legal Help unless there is likely to be a delay before the application is determined or further work needs to be done without which the Client's position would be prejudiced or there is an ongoing Criminal Investigation relating to that Matter. The reasons must be noted on the file in such circumstances. You must not undertake more than two hours work on making the application for the Certificate.

### **Limits on Claims**

13.37 Subject to any extension granted in accordance with **Part A**, the rates set out in the civil Specification apply to this Unit of Work.

### **Payment**

13.38 The Legal Help Fixed Fee for Proceeds of Crime Act work is the Fixed Fee for the Miscellaneous Category of Work.

13.39 You must claim for work undertaken in the Associated CLS Class of Work at such rates as are specified in the Payment Annex to the civil Specification.