



The Duty Solicitor Arrangements 2008

5 May 2008

LEGAL SERVICES COMMISSION

CRIMINAL DEFENCE SERVICE

1. Introduction and Purpose of these Arrangements

Introduction to the Duty Solicitor Schemes

- 1.1 The LSC operates Duty Solicitor Schemes as part of the Criminal Defence Service (CDS). These comprise:
 - (a) Police Station Duty Solicitor Schemes;
 - (b) Magistrates' Court Duty Solicitor Scheme.
- 1.2 The primary objective of these Schemes is to ensure that individuals requiring Advice and Assistance (including Advocacy Assistance) at a Police Station or at a Magistrates' Court, and who choose not, or are not able, to obtain such help from their Own Solicitor, may have access to the services of a Duty Solicitor.
- 1.3 Work on Police Station Duty Solicitor Schemes is allocated in one of three ways:
 - (a) Rotas (where there is a list of Duty Solicitors who are allocated to provide Advice and Assistance during a given time slot);
 - (b) Panel (where the Defence Solicitor Call Centre (DSCC) calls Duty Solicitors from the Panel membership in a consecutive sequence to identify a Duty Solicitor to provide Advice and Assistance);
 - (c) Back-up (where the DSCC finds that no Rota Duty Solicitor is available, and seeks to contact another Duty Solicitor from that Scheme).
- 1.4 Work on Magistrates' Court Duty Solicitor Schemes is allocated in one of three ways:
 - (a) Rotas (where there is a list of Duty Solicitors who are allocated to provide Advice and Assistance during a given time slot);
 - (b) Panel (by Rota) where Duty Solicitors from the Panel membership are called in to the court at the court's request in a sequence set by Rota to provide Advice and Assistance);
 - (c) Panel (by list) (where there is a Panel List of Duty Solicitors who are called by the Court as and when required to provide Advice and Assistance).

Purpose of these Arrangements

- 1.5 These Arrangements are made by the LSC under section 3(4) of the Access to Justice Act 1999 (the Act).
- 1.6 Duty Solicitors may apply to become members of Schemes, and the rules for Membership of the Schemes and provisions on leaving the Schemes are set out in these Arrangements.
- 1.7 Membership of a Scheme initially entitles Duty Solicitors to Back-up work, to be included on the subsequent Rota or to be added to the list of Panel members (if the scheme is a Panel Scheme).
- 1.8 These Arrangements also set out how the LSC operates the Schemes and how work is allocated on the Schemes.
- 1.9 Work on Schemes (whether Rota or Panel) is allocated to CDS Suppliers according to the work allocation rules, not to individual Duty Solicitors employed by those CDS

Suppliers, although named Duty Solicitors will be on the Rotas and Panels so that the DSCC has a specific person to contact.

- 1.10 The obligation to undertake Duty Scheme work is on the CDS Supplier and the rules concerning conduct of that work are set out in the Unified Contract (Crime), not in these Arrangements.

Amending these Arrangements

- 1.11 Amendments to these Arrangements will be by consultation process, following the same procedures as are set out in the Unified Contract (Crime).
- 1.12 Unless we consider that there is an urgent need to amend these Arrangements, consultation need last no longer than six weeks. If we consider that there is an urgent need to amend these Arrangements, consultation need last no longer than 21 days.

2. Definitions

- 2.1 The following terms are defined as follows:

“Accessible” refers to the Duty Solicitor’s travel time from their or another office of their CDS Supplier to the Magistrates’ Court and is relevant for the purposes of assessing applications by solicitors to join additional “less busy” Schemes. Further guidance is in the Duty Solicitor Manual under paragraph 4.20.

“Accreditation” means accreditation under Parts One and Two of Stage One of the Law Society’s Criminal Litigation Accreditation Scheme (CLAS).

“Accredited Representative” means an individual (including a solicitor or a barrister) whose name is included on the Police Station Register and who is accredited by a body recognised by us as competent to do so.

“Act” means the Access to Justice Act 1999.

“Advice and Assistance” means advice and assistance within the meaning of section 13 of the Act.

“Advocacy Assistance” means advice and assistance by way of advocacy within the meaning of section 13 of the Act.

“Applicant” means a Duty Solicitor who wishes to join a Scheme.

“Back-up” means a system by which the DSCC (when a Duty Solicitor on a Rota is unable to accept a request for Police Station Advice and Assistance) it contacts another Duty Solicitor from that Scheme in a consecutive sequence.

“Busy Scheme” means a Local Scheme which serves a Magistrates’ Court which deals with more than 1,250 defendants each year who are prosecuted for non-motoring offences.

“Call In” is a scheme in which the court Duty Solicitor is required to attend at the Magistrates’ Court’s request. This may operate as a Rota or a Panel.

“CDS” means the Criminal Defence Service established by the LSC under section 12 of the Act.

“CDS Direct” means the service in which the DSCC refers certain requests for Police Station Advice and Assistance to a CDS Direct Telephone adviser.

“CDS Supplier” means a firm of solicitors which holds a Unified Contract (Crime) or an office of the Public Defender Service.

“CDS Supplier’s Office” and “Office” means an office which is listed in the Schedule of Offices to that CDS Supplier’s Unified Contract (Crime).

“Commission and LSC” means the Legal Services Commission established under section 1 of the Act and includes its Regional CDS Managers.

“CPD” means continuing professional development as defined in the Law Society Training Regulations 1990.

“Defence Solicitor Call Centre” or “DSCC” is the call centre provided on behalf of the LSC by an independent contractor to deal with requests for Advice and Assistance (for both Own Solicitors and Duty Solicitors) from Clients at the Police Station.

“Designated Fee Earner” has the meaning given in the Unified Contract (Crime)

“Duty Period” means a period during which a Duty Solicitor is required to be available to give Advice and Assistance or Advocacy Assistance under a Scheme.

“Duty Solicitor” means a solicitor, or employed barrister, who is admitted to a Scheme under these Arrangements.

“Expansion Scheme” means a scheme which a duty solicitor is entitled to join by virtue of Step 3 of the Four-Step Procedure, whereby in a slot allocation tendering process, if it appears to the LSC that there is an inadequate supply of Duty Solicitors on a particular scheme following Steps 1 and 2, applications from Duty Solicitors who are further away than the location requirements would otherwise allow, will be allowed to join.

“Four-Step Procedure” is the procedure which the LSC follows when deciding Scheme membership and Rota Slot allocation in a contract tendering process.

“Less Busy Scheme” means a Magistrates’ Court Scheme which deals with fewer than 1,250 defendants each year who are prosecuted for non-motoring offences.

“List of Slots” means series of Rota or Panel Slots over a given period, relating to a Scheme.

“Scheme” means a Duty Solicitor scheme covering one or more Magistrates’ Courts and/or one or more Police Stations within a geographical area defined by us, which is usually a petty sessions area where the work is allocated by way of a Rota, Panel, or Call In, or a mixture of these.

“Own Solicitor” means a solicitor who provides Advice and Assistance to a client other than as a Duty Solicitor.

"Panel" and *"Panel List"* means a list of Duty Solicitors who are allocated in turn to provide Advice and Assistance at a Police Station or at a Magistrates' Court in a consecutive sequence.

"Police Station" means a police station or any other place where a constable is present and, except where expressly excluded by the Unified Contract (Crime) or these Arrangements, any place where a Services Person is assisting with an investigation by the Services Police.

"Police Station Register" is the list of Accredited and Probationary Representatives maintained by the LSC or the Law Society.

"Public Defender Service" means the service provided by employed lawyers, funded directly by the LSC, as part of the CDS to provide Advice and Assistance and Representation to individuals.

"Readily Accessible" refers to the defendant's travel time from the Magistrates' Court to the CDS Supplier's Office by public transport, and is relevant for the purposes of assessing applications by Duty Solicitors to join additional "busy" Schemes. Generally, the journey should not take more than 20 minutes, including walking to and from the station or bus stop. Further guidance is in the Duty Solicitor Manual under paragraph 4.20.

"Regional CDS Manager" means an employee of the LSC with responsibility for the management of the Local Schemes within the geographic area covered by a Regional Office.

"Region" has the meaning given in Schedule 1 to these Arrangements.

"Regional Director" and *"Regional Office"* have the meanings given in the Legal Services LSC Regional Arrangements 2000.

"Regional Committee" means the Committee appointed by the LSC for each Region for the purpose of determining appeals under these Arrangements and facilitating consultation.

"Rota" means a list of Duty Solicitors allocated to provide Advice and Assistance or Advocacy Assistance at Magistrates' Courts and Advice and Assistance at Police Stations over a given period.

"Slot" means the period of time during which a Duty Solicitor is on duty, (whether on a Rota or Panel Scheme) either at the Police Station or at the Magistrates' Court.

"Services Person" means a person assisting with an investigation by the Services Police.

"Services Police" means members of the Royal Navy Regulating Branch, members of the Royal Military Police, Royal Air Force Provost Officers or members of the Royal Air Force Police.

"Scheme List" means "List of Slots" (See above).

"Special Rules" means rules applicable to a Scheme which differs from the general rule where the particular local conditions of the Scheme mean that an alternative approach would be more appropriate.

3. Regions and Local Schemes

- 3.1 For the purposes of these Arrangements, England and Wales shall be divided into the Regions which are set out in Schedule 1 of these arrangements.
- 3.2 The LSC shall establish Schemes within each Region and shall identify which Magistrates' Courts and Police Stations will be covered by a particular Scheme.
- 3.3 The LSC may, by prior consultation with the relevant Scheme members change the Magistrates' Courts and Police Stations covered by a Scheme if it considers it appropriate to do so.

4. Membership by Duty Solicitors of Schemes

- 4.1 The LSC shall determine, in accordance with these Arrangements, the membership of each Scheme. Membership of a Scheme does not automatically confer rights on a Duty Solicitor or on the CDS Supplier which employs him to Slots on that Scheme or to be on a Panel or Call In. Slots and places on the Panel are allocated to the CDS Supplier, and not to the individual Duty Solicitor on the Scheme. Membership of a Scheme entitles the CDS Supplier to Back-Up work on that Scheme, irrespective of whether they have been allocated any Rota Slots or places on a Panel or Call In Scheme for the Duty Solicitors they employ.

Applications to become a Scheme Member

- 4.2 Applications for Scheme membership shall be made to the appropriate Regional Office of the LSC, on a form approved by the LSC, and will be judged on the criteria set out in these Arrangements. See also the provisions in paragraph 4.15 which provides that an Applicant must be employed by a CDS Supplier.

Competence requirements for becoming a Duty Solicitor

- 4.3 The LSC is responsible for ensuring that all members of Schemes are competent to undertake Duty Solicitor work.
- 4.4 An Applicant for membership of a Scheme must provide the LSC with evidence of his or her competence to undertake Duty Solicitor work in accordance with paragraph 4.6 of these Arrangements.
- 4.5 An Applicant shall have at least 12 months comprehensive experience of criminal defence work, including the provision of advice in the Police Station and advocacy in the Magistrates' Court or Crown Court prior to applying to join a Local Scheme. However:
 - (a) if an Applicant has been in full time employment as a prosecuting solicitor, justices' clerk or in another similar position for a period of 18 months, he or she must have had at least six months comprehensive experience of criminal defence work immediately prior to the application;
 - (b) any interval of up to 12 months, during or at the end of the periods of experience required by this paragraph, when the Applicant was absent from work due to sickness, injury, pregnancy, maternity leave or for other good reason may be disregarded.

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- 4.6 An Applicant shall provide evidence of competence to the LSC in one of the following ways:

For membership of a Police Station Scheme or a Magistrates' Court Scheme

- (a) Previous membership of Police Station Scheme or a Magistrates' Court Scheme as a Duty Solicitor (in accordance with the LSC's Duty Solicitor Arrangements 2001, or a former version of those Arrangements), or
 - (b) Accreditation as defined in these Arrangements and satisfaction of the criteria in paragraph 4.7.
- 4.7 Where accredited status was achieved more than 12 months before the date of application to the Scheme, the Applicant shall demonstrate the regular satisfactory performance of Police Station and Magistrates' Court work since that time.

Membership of Schemes – General Rules

- 4.8 An Applicant shall notify the LSC of the address of the CDS Supplier's Office at which he or she is normally based for the majority of the working week. An Applicant may only notify the LSC of one such Office. This rule does not prevent a Duty Solicitor from being employed as an agent or a locum by another CDS Supplier.
- 4.9 Subject to meeting the membership criteria, an Applicant is entitled to join the Police Station and Magistrates' Court Schemes covering the area in which his or her CDS Supplier's Office is located, (and notified in accordance with paragraph 4.8). Alternatively, an Applicant may apply to join a Police Station Scheme and a Magistrates' Court Scheme other than the ones covering the area in which his or her Office is located, if the Police Stations and courts covered by the alternative Schemes are more readily accessible to the Office where the Applicant works.
- 4.10 The LSC shall require Duty Solicitors to serve on both the Police Station and the Magistrates' Court Schemes.

Membership of Additional Schemes

- 4.11 The LSC may, subject to the requirement in paragraph 4.10, permit an applicant to join an additional Scheme or Schemes, provided that:
- (a) for a Police Station (only) Scheme, the applicant can demonstrate that he or she is able to attend the Police Station within 45 minutes of receiving a call - whether in or out of normal office hours;
 - (b) for a Busy Scheme (Police Station and Magistrates' Court) the CDS Supplier's Office, identified under paragraph 4.8, is Readily Accessible to the court covered by the Scheme which the Applicant wishes to join;
 - (c) for a Less Busy Scheme (Police Station and Magistrates' Court), the CDS Supplier's Office identified under paragraph 4.8 (or another Office which appears in the Schedule of Offices to that Supplier's Unified Contract (Crime)), is Accessible to the court covered by the Scheme which the applicant wishes to join. Arrangements must be made so that clients can be seen at either Office.
- 4.12 Where a strict application of the criteria set out in paragraphs 4.11(a), (b) or (c) would prevent individuals wishing to receive Duty Solicitor services from doing so by restricting

the membership of a particular Scheme to an unacceptably low level, the LSC may relax the requirements of those paragraphs in respect of applications to join a Scheme.¹

Special Rules for Membership of Schemes

- 4.13 The LSC may introduce Special Rules for a particular Scheme or Schemes which differ from the general rule where the particular local conditions of the Scheme mean that an alternative approach would be more appropriate.²
- 4.14 Where the LSC plans to introduce Special Rules for a Scheme or Schemes it shall consult the relevant Scheme members. Details of any rules introduced will be published and made available to all interested CDS Suppliers within the area covered by the Scheme or Schemes. The LSC shall provide six weeks' notice of the introduction of any such Special Rules.

Further Rules on Applications for Scheme Membership

- 4.15 An Applicant must be a full or part time Designated Fee Earner employed by, or a partner in, a CDS Supplier and must notify the appropriate Regional Office of the CDS Supplier for which he or she will undertake Duty Solicitor work, i.e. which will submit claims to the LSC for the work and which will be contractually responsible for the performance of the Applicant's Duty Solicitor work. For the purposes of joining a Scheme or additional Schemes, Applicants may only nominate one office in accordance with paragraph 4.8 above.
- 4.16 An Applicant must hold a current practising certificate which may (in the discretion of the LSC) be conditional.
- 4.17 An Applicant must not be a special constable.
- 4.18 An Applicant may not apply for Scheme membership during any period of suspension or exclusion from membership imposed under paragraphs 5.2 or 5.4 of these Arrangements.
- 4.19 Where:
- (a) an Applicant is under investigation, faces an outstanding criminal charge or has been convicted of a criminal offence which is not treated as spent under the Rehabilitation of Offenders Act 1974; or

¹ The circumstances in which paragraph 4.12 might apply are, for example:

- (a) where the geographical catchment areas of Police Stations and Magistrates' Courts may be large and where there may be relatively low numbers of solicitors; or
- (b) where the Police Stations at which individuals are held are at some distance from where they were arrested and from the magistrates' court at which any hearing may take place.

² The circumstances in which paragraph 4.13 might apply are, for example, where there may be a large number of different Schemes in relatively close proximity to each other and a large number of CDS Suppliers with offices reasonably accessible to the Police Stations and courts within all, or a number of, those Schemes.

(b) an Applicant has been the subject of any adverse findings by the Adjudication Committee of the Solicitors Regulation Authority or by the Solicitors' Disciplinary Tribunal, or where any complaint or application to either body has not been determined; or

(c) some other good reason arises which makes an Applicant's scheme membership incompatible with the standards expected of a Duty Solicitor,

the LSC may refuse the application, provided that it gives the Applicant written reasons for its decision.

Approval of applications

4.20 Where an application for Scheme membership is approved by the LSC, it shall notify the Applicant within 30 days of the date of receipt of the application.

Refusal of applications

4.21 If the LSC refuses the application it shall notify the Applicant and provide a statement of reasons for the decision within 30 days of receipt of the application.

4.22 Any Applicant whose application is refused under paragraph 4.21 may appeal to the Regional Committee in accordance with Section 7 of these Arrangements.

4.23 There is no right of appeal to the LSC against a refusal, revocation or suspension of Accreditation by the Solicitors Regulation Authority. Such appeals should be directed to the relevant Accreditation assessment organisation or to the Solicitors Regulation Authority.

5. Continued Membership of Schemes

5.1 Continued membership of a Scheme is dependent on a Duty Solicitor:

(a) undertaking at least two hours CPD annually on issues relevant to the law, practice and procedure in the Police Station or Magistrates' Courts;

(b) undertaking personally a number equivalent to the majority of:

- i) Court Duty Solicitor Rota Slots allocated to that solicitor; and
- ii) Police Station Duty Solicitor Slots allocated; and

(c) continuing to undertake criminal defence work generally and Duty Solicitor work in particular as evidenced by accepting at least 12 Police Station Duty Solicitor or Own Solicitor cases annually involving an attendance at the Police Station or, where fewer than this number of cases are offered, all cases so offered (or a number equivalent to those offered).

(d) being employed by a CDS Supplier

Suspension or Removal of Duty Solicitors from Membership of Schemes

5.2 The LSC shall have power to suspend for a period of up to 12 months or remove a Duty Solicitor from the Scheme or Schemes of which he or she is a member if he or she fails

- to meet any of the criteria in paragraph 5.1 in relation to a Scheme. On suspension, the LSC may impose conditions which must be met before the Duty Solicitor resumes his or her membership of the relevant Scheme or Schemes.
- 5.3 The LSC shall not suspend or remove a Duty Solicitor from membership of a Scheme or Schemes where any of the criteria in paragraph 5.1 are not met because of an absence from work of up to 12 months owing to sickness, injury, pregnancy, maternity leave or some other good reason.
- 5.4 The LSC may suspend or remove a Duty Solicitor from membership of a Scheme or Schemes where:
- (a) that Duty Solicitor
- (i) has unreasonably failed to attend a Police Station when he or she should have done so;
 - (ii) has sent a representative to the Police Station when he or she should have attended personally;
 - (iii) has failed to accept a reasonable number of Panel calls over a six month period;
 - (iv) has failed to accept a Rota case or cases when he or she should have done so;
 - (v) unreasonably failed to carry out a duty or duties or failed to comply with the requirements set out in these Arrangements including local instructions drawn up under paragraphs 6.13 to 6.15 or the requirements of any contract between the LSC and the Duty Solicitor's CDS Supplier;
 - (vi) is under investigation, faces an outstanding criminal charge or has been convicted of a criminal offence or is the subject of an investigation by the Solicitors Regulation Authority or Legal Complaints Service;
 - (vii) does not demonstrate the level of competence required for Accreditation or Accreditation has been suspended or revoked or (it transpires) has never been Accredited);
 - (viii) no longer complies, or (it transpires) has never complied, with the "location" rules set out in paragraphs 4.8 to 4.13;
 - (ix) is no longer a Designated Fee Earner with a CDS Supplier;
 - (x) does not comply with, and the LSC has not waived, the requirement in paragraph 4.10;
 - (xi) joined that Scheme as an Expansion Scheme, in circumstances where the membership of that Scheme has subsequently increased so that it is adequately staffed in terms of separate CDS Suppliers and sufficient individual Duty Solicitors who are members of that scheme as a first or additional Scheme under the normal eligibility rules; or
- (b) some other good reason arises which makes his or her continuing Scheme membership incompatible with the standards expected of a Duty Solicitor, for

example, Duty Solicitors must carry out their duties so as not to discriminate on grounds of race, gender, sexual orientation, religion, age or disability and regardless of the nature of any offence for which the Client is under investigation or with which the Client has been charged or previously convicted.

- 5.5 Where the LSC is considering suspending or removing a Duty Solicitor from a Scheme or Schemes, it must:
- (a) notify the Duty Solicitor of its reasons in writing, and
 - (b) offer the Duty Solicitor an opportunity to make written representations against the LSC's decision.
- Representations must be sent to the LSC within 14 days of receipt of the notification.

Immediate Suspension or Removal

- 5.6 Where the LSC is considering suspending or removing a Duty Solicitor under paragraphs 5.4(a)(v), (vi), (vii), (ix), (x) or 5.4(b) it may suspend or remove the Duty Solicitor immediately if it considers it necessary to do so. Where the LSC decides to remove a Duty Solicitor under paragraph 5.4(a) (xi), provided at least 4 weeks notice is given to the Duty Solicitor of this decision, the removal will be effective at the end of the current Rota.
- 5.7 Where a Duty Solicitor is suspended from membership of a Scheme under paragraphs 5.2 or 5.4 and is unable to fulfil any conditions imposed under paragraph 5.2, he or she may apply to the LSC in writing for restoration to the Scheme or Schemes concerned once the suspension period has expired.
- 5.8 Where a Duty Solicitor is removed from a Scheme under paragraph 5.4, a fresh application for Scheme membership will be considered against all of the criteria in Section 4 of these Arrangements. The reasons for the Applicant's removal may be a factor considered by the LSC under paragraph 4.19(c) of these Arrangements.
- 5.9 A Duty Solicitor who has been suspended or removed under this Section may appeal to the Regional Committee in accordance with the provisions of Section 7 of these Arrangements.
- 5.10 The LSC shall postpone a suspension or removal until any appeal is heard unless it considers that there is good reason for suspending or removing the Duty Solicitor prior to the appeal hearing which shall be notified to the appellant.

Changes in circumstances

- 5.11 It is the responsibility of a Duty Solicitor, and the CDS Supplier for which he or she acts as a Duty Solicitor, to notify the LSC immediately in any of the following circumstances:
- (a) if the Duty Solicitor gives formal notice of leaving or leaves the CDS Supplier in which he or she is employed as a Duty Solicitor;
 - (b) if the Duty Solicitor's practising address changes;
 - (c) if the Duty Solicitor is no longer able to comply with any of the qualifying or continuing membership criteria (set out in Sections 4 and 5 of these Arrangements);
 - (d) if the Duty Solicitor wishes voluntarily to withdraw from a Scheme or Schemes in accordance with paragraph 6.10 of these Arrangements;

- (e) on resignation from a Scheme, giving at least one month's notice;
- (f) if he or she is under investigation for or is charged with a criminal offence;
- (g) if any proceedings have been instituted before the Adjudication Committee of the Solicitors Regulation Authority or Legal Complaints Service or by the Solicitors' Disciplinary Tribunal; or
- (h) if the Adjudication Committee of the Solicitors Regulation Authority or Legal Complaints Service or the Solicitors' Disciplinary Tribunal has made an adverse finding.

6. Management of Local Schemes

6.1 The LSC shall manage each Scheme. Generally, responsibility for management is delegated to the Regional CDS Manager in the LSC's Regional Office which covers the area in which the Scheme operates.

Rotas, Panels and Call Ins

- 6.2 The LSC shall decide:
- (a) in consultation with the appropriate Magistrates' Courts, whether there should be attendance or Call In (whether by Rota or Panel) cover, or a combination of both, for each Magistrates' Court Scheme;
 - (b) whether there should be Rota or Panel cover, or a combination of both, for each Police Station Scheme,

and the times during which such arrangements shall be in operation. In both instances the LSC shall also consult with the relevant Regional Committees and with Scheme members by local consultation.

Slot Allocation

- 6.3 For each Scheme (run by Rota) the LSC shall maintain a List of Slots. CDS Suppliers will be allocated slots on the Rota in proportion to the number of Duty Solicitors employed by that CDS Supplier who are members of that Scheme. For Police Station Schemes run by Panel, CDS Suppliers will be allocated one place on the Panel List for every Duty Solicitor employed by that CDS Supplier who is a member of that scheme.
- 6.4 Rota, Panel and Call In Schemes will be based on the Scheme membership. Rota Slots will be allocated to CDS Suppliers in accordance with the number of Duty Solicitors employed by them on the Scheme, following the Four-Step Procedure at 6.5, and in accordance with the number of Slots available on the Scheme List.

The Four-Step Procedure for Slot Allocation in a Tendering Process

- 6.5 **Step 1:** For all CDS Suppliers who have:
- (a) been awarded a Unified Contract (Crime); and
 - (b) whose Duty Solicitors have successfully applied to join a Scheme or Schemes and meet any other local qualification rules for that Scheme;

- the name of each Duty Solicitor will be entered on the relevant Rota. Slots will be allocated to each of those CDS Suppliers in proportion to the number of solicitors on that Rota. If, after this step, the LSC determines that the Rota is adequately staffed, both in terms of the number of separate CDS Suppliers to avoid conflicts of interest, and sufficient individual Duty Solicitors to staff the Scheme fully, the Rota for that Scheme will be finalised for the duration of that Rota (usually, three to six months).
- 6.6 **Step 2:** If it appears to the LSC that there is an inadequate supply of Duty Solicitors on a particular Rota to run that Scheme, the LSC will consider the applications of those who have expressed an interest in appearing on that Rota more frequently (by considering the maximum number of Slots they are prepared to undertake in a given period). The additional frequency allocated to the provider will be in proportion to their number of Duty Solicitors. This allocation will be up to either the maximum indicated by the Supplier, or as required by the LSC. The Rota will thus be extended using the Duty Solicitors already on that Rota. If, after this step, the LSC determines that the Rota is adequately staffed, both in terms of the number of separate Suppliers to avoid conflicts of interest, and sufficient individual Duty Solicitors to staff the Scheme fully, the Rota for that Scheme will be finalised for the duration of that Rota (usually, three to six months).
- 6.7 **Step 3:** If it appears to the LSC that there is still inadequate supply following the steps above, the LSC may, in order to fulfil its statutory duty under section 12 & 13 of the Act, include those CDS Suppliers who have expressed an interest in expanding into Schemes for which they would not normally qualify, until it is satisfied that there are enough Duty Solicitors and CDS Suppliers to operate the Scheme adequately. Duty Solicitors who join a Scheme by virtue of this Step have joined an “Expansion Scheme”. Once the Scheme is adequately staffed, both in terms of the number of separate CDS Suppliers in case of conflicts of interest, and enough individual Duty Solicitors to staff the Scheme fully, the Rota for that Scheme will be finalised for the duration of the Rota (usually, three to six months).
- 6.8 **Step 4:** If it appears to the LSC that there is still inadequate supply following the steps above, the LSC may invite applications from CDS Suppliers to join the scheme in question, including inviting CDS Suppliers who are further away than the local rules would ordinarily allow, by relaxing the travel time requirements in accordance with paragraph 4.12.

Rotas

- 6.9 The LSC shall determine the number of Duty Solicitors to deploy at any one time in consultation with the relevant Magistrates’ Courts, Police Stations, relevant Regional Committees and with Scheme members.
- 6.10 The LSC may determine, without consultation, that Duty Solicitors should be available or additional Duty Solicitors be available to respond to unusual demands.
- 6.11 The LSC shall normally produce Rotas covering a period of three to six months and shall normally issue Rotas one month before the start date. From time to time, operational requirements may necessitate Rotas of a shorter length being produced. The LSC reserves the right to amend the last three months of a six month Rota (or second half of a Rota of shorter length) to correct errors or omissions of Slot Allocation in the first two months of that Rota (or equivalent period in a Rota of shorter length). One month’s notice will be given of any such amendment.

- 6.12 Duty Solicitors who are new to a particular Scheme will be added to the membership of that Scheme as soon as possible. Initially, membership of a Scheme entitles that Duty Solicitor to be eligible for Back-up work on that Scheme. Entitlement to Slots on a Scheme will be determined in accordance with paragraphs 6.3-6.4 above (except that in a tendering process, slot allocation will be determined by the Four-Step Procedure at paragraph 6.5). A new Scheme member will not be entitled to Rota Slots until the subsequent Rota is produced, and should note the provision in 6.11 that Rotas are normally issued one month before the start date.
- 6.13 Copies of any Scheme List showing Rota Slot allocation (or list for a Call In Scheme) will be sent, as appropriate, to the Magistrates' Court, the DSCC and each CDS Supplier with a Duty Solicitor on the Scheme.

Panels

- 6.14 Duty Solicitors who are new to a particular Scheme which is operated by Panel, (as opposed to Rota) will be added to the end of the Panel List as soon as possible. Panel work will be allocated by the DSCC (for Police Station Advice and Assistance) in a consecutive sequence. Court Panel schemes may be organised by a 'rota' arrangement, whereby the members of that Panel are told in advance when they are to attend the court, or by way of a 'panel', whereby the court telephones the solicitors in a consecutive sequence when they are required to attend.

Voluntary or permanent withdrawal from Schemes

- 6.15 It is the responsibility of both the Duty Solicitor and the CDS Supplier for which he or she undertakes Duty Solicitor work to ensure that the LSC is notified that a Duty Solicitor wishes to leave a Scheme.
- 6.16 A Duty Solicitor may notify the LSC by giving at least three month's notice that he or she wishes to withdraw voluntarily from a Scheme for a period of up to three months but may only do so once within a period of 12 months. Where this is the case the Duty Solicitor will be restored to the Scheme automatically at the end of the withdrawal period. The three month withdrawal period may be extended provided that the Duty Solicitor still complies with the Accreditation and other membership requirements. The CDS Supplier continues to have a contractual obligation under the Unified Contract (Crime) to ensure that all slots allocated to it for the duration of that Scheme List are covered.

Client awareness

- 6.17 The LSC shall take steps to ensure that potential clients are made aware of the availability of the Duty Solicitor at Police Stations and Magistrates' Courts.

Local Instructions

- 6.18 The LSC may draw up local instructions which set out how the Duty Solicitor service is to be provided at particular Police Stations or Magistrates' Courts.
- 6.19 Local instructions may also set out arrangements agreed with other criminal justice agencies to improve the overall effectiveness of the criminal justice system locally. CDS Suppliers with Duty Solicitors on the affected Scheme(s) will be consulted using the arrangements in paragraph 7.24 before such instructions are introduced or amended. The Regional Committee may also be consulted.

- 6.20 Where local instructions are drawn up, Duty Solicitors on the relevant Scheme or Schemes shall comply with them.

Duty Solicitor Service

- 6.21 If it is not possible for any Duty Solicitor to provide service on a Scheme the LSC may make alternative arrangements for such service to be provided. No consultation is necessary for the LSC to make arrangements under this provision.

Services cases

- 6.22 The LSC may introduce a special panel for cases where services personnel require Advice and Assistance and Advocacy Assistance.

7. Committees, Appeals and Consultation

- 7.1 The LSC shall establish one or more Regional Committees for each of the Regions set out in Schedule 1 to these Arrangements. The area covered by a Regional Committee may be amended by the LSC in consultation with the relevant Regional Committee. The role of a Regional Committee is to:

- (a) consider appeals in accordance with these Arrangements; and
- (b) facilitate consultation and communication between the members of Schemes, the LSC and other criminal justice agencies affected by the operation of Duty Solicitor services.

- 7.2 The members of each Regional Committee shall be such as the Regional Committee shall from time to time appoint and will normally be the following:

- (a) at least one Duty Solicitor from each of the Schemes falling within the Region covered by the Regional Committee who shall normally be a member of any Local Committee in the Region or other local liaison group established by the LSC under paragraph 7.24;
- (b) one or more Justices of the Peace, nominated by the Magistrates' Association;
- (c) one or more Justices' Clerks, nominated by the Justices' Clerks' Society;
- (d) one or more representatives of the police force or forces in the Region, nominated by the chief officer(s) of police;
- (e) one or more lay members who shall, prior to appointment, be interviewed by the chair or vice chair of the Regional Committee to ascertain the Applicant's understanding of the role and suitability for membership (members of court staff are ineligible for appointment under this sub-paragraph);
- (f) one or more representatives of the probation service or services in the Region, nominated by that service or those services;
- (g) one or more representatives of the Crown Prosecution Service in the Region, nominated by that service;
- (h) a District Judge (Magistrates' Court); and

- (i) such other members as the Committee decides to appoint.
- 7.3 The members of a Regional Committee shall not be fewer than 10 nor more than 35. The majority of members shall be solicitors appointed under paragraph 7.2 (a) above.
- 7.4 Each member shall be appointed for a term of up to three years and may be appointed for successive terms, provided that the total period of service shall not exceed ten years, until he or she attains the age of 70. A member shall be reappointed only if he or she has attended at least half of all the meetings which were held during his or her membership unless there are special circumstances to permit reappointment despite a lower level of attendance.
- 7.5 A member of a Regional Committee may resign by giving notice in writing to the appropriate Regional Office. Any vacancy on a Regional Committee so arising shall be filled in accordance with the provisions in this Section.
- 7.6 A member of the Regional Committee shall be disqualified from membership if:
 - (a) a receiving order in bankruptcy is made against him or her;
 - (b) he or she becomes a person lacking mental capacity within the meaning of the Mental Capacity Act 2005;
 - (c) he or she fails to attend meetings without leave of the Committee for six months;
 - (d) he or she ceases to be a nominee of any body or organisation he or she was nominated to represent; or
 - (e) there is some other good reason to disqualify him or her.
- 7.7 The Committee shall at the first meeting after its appointment and then annually elect a member to act as chair of the Committee and another to act as vice chair. A chair or vice chair shall be eligible for reappointment at the expiration of such period provided that no chair or vice chair shall hold office for more than three years.
- 7.8 A Regional Committee may appoint a sub-committee of at least three members to whom it may delegate all decisions excluding appeals, provided that the full Regional Committee meet at least twice a year. A sub-committee shall consist of at least one Duty Solicitor and one lay member.
- 7.9 A Regional Committee or its Chair may appoint a sub-committee of at least three members appointed under 7.2 (a) or (e) (provided that there are at least two members appointed under 7.2 (a)) to whom it may delegate the determination of appeals.
- 7.10 A quorum shall consist of not less than one third of the members of the committee or sub-committee and in any event shall consist of a minimum of two members.
- 7.11 A Regional Committee or a sub-committee shall keep minutes of its proceedings and such minutes shall be signed by the Chair.
- 7.12 The ruling of the Chair of a Regional Committee or a sub-committee shall be final on any matter of procedure arising at a meeting.

Appeals

- 7.13 The following decisions of the LSC under these Arrangements may be the subject of appeal by an Applicant for membership of a Scheme or by a Duty Solicitor:
- (a) a decision to refuse an Applicant membership of a Scheme under Section 4 of these Arrangements;
 - (b) a decision to remove or suspend a Duty Solicitor from a Scheme under paragraphs 5.2 or 5.4;
 - (c) a decision to refuse to register a police station representative under paragraph 2.2 or 2.9 of the Police Station Register Arrangements 2001;
 - (d) a decision to suspend or remove a police station representative under paragraph 6.4 of the Police Station Register Arrangements 2001;
 - (e) a decision to suspend a solicitor from acting as a supervising solicitor for probationary representatives under paragraph B1.1.7(14) of the Unified Contract (Crime) Specification.
- 7.14 All appeals shall be made in writing within 30 days of receipt of the decision against which the appeal is to be made, subject to the Regional Committee having discretion to accept an appeal outside that period for good reason. The appellant shall submit written representations when giving notice of appeal. The LSC's staff may obtain and provide information relating to the appeal provided that the appellant receives a copy.
- 7.15 On receipt of an appeal under paragraph 7.13 the LSC may reconsider its decision, but if it decides not to do so, it shall refer the matter to the Regional Committee or to another Regional Committee if no suitable members of the Regional Committee are available to consider the appeal.
- 7.16 The Regional Committee will normally consider appeals at the latest within three months of the date on which the appeal was received. The appellant has the right to make oral representations and the Committee may, in any event, require personal appearance. The LSC may also be represented at the appeal.
- 7.17 Written representations should be submitted to the LSC at least 14 days before the appeal hearing date. The Regional Committee has a discretion not to consider representations which are submitted fewer than 14 days before the hearing date.
- 7.18 The Regional Committee shall consider the application afresh in accordance with the relevant criteria in these Arrangements using the most current guidance available. The decision of the Regional Committee will replace the decision of the LSC, except that the Regional Committee cannot replace the decision of the LSC with a decision which is ultra vires these Arrangements.
- 7.19 A Duty Solicitor member of the Regional Committee who is a member of the Scheme to which the appeal relates shall not participate in the hearing and determination of such appeal.
- 7.20 The Regional Committee may exclude the appellant from any other Scheme or Schemes on the basis of its appeal findings and shall provide reasons for doing so.

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- 7.21 The Regional Committee may allow an appeal subject to such conditions as it considers appropriate.
- 7.22 Appellants will be notified of the decision of the Regional Committee in writing. The Regional Committee shall provide reasons for its decision.

Committee Fees

- 7.23 There shall be paid to any Regional Committee members attending meetings under these Arrangements such fees and such travelling and other proper expenses and subsistence allowances as the Lord Chancellor may from time to time authorise.

8. Transitional Arrangements

- 8.1 Regional Committees established under the Duty Solicitor Arrangements 2001 shall continue as though established these Arrangements. Applications by Duty Solicitors to join Schemes from 14 July 2008 shall be governed by the procurement process for the Unified Contract (Crime) and by these Arrangements.
- 8.2 These Arrangements replace the Duty Solicitor Arrangements 2001 and come into force on 5 May 2008. The Duty Solicitor Arrangements 2001 are revoked.

Schedule 1

Duty solicitor Schemes defined by Counties, unitary authorities and Metropolitan Borough Councils