Legal Services Commission Specialist Fraud Panel Arrangements 2002

Part 1 - Preliminary

Introduction

1.1 These Arrangements are made by the Legal Services Commission. They set out the arrangements that apply to applications for membership of the Commission's Specialist Fraud Panel. This is a panel of firms with the necessary experience, expertise and capacity to undertake the defence of Very High Cost Fraud Cases under the Legal Services Commission's Very High Cost Criminal Cases Arrangements 2002.

1.2 The CCU will carry out the functions under these Arrangements, in accordance with any guidance and directions issued by the Commission.

Interpretation

1.3 In these Arrangements:

"Applicant" means a firm applying for membership of the Panel;

"Arrangements" means the Legal Services Commission Specialist Fraud Panel Arrangements 2002;

"Barrister" or "Counsel" includes a solicitor with higher court advocacy rights;

"CCU" means the Legal Services Commission's Criminal High Cost Cases Unit;

"Commission" means the Legal Services Commission;

"Committee" means the committee established in accordance with Annex 2 with the function of determining appeals under these Arrangements;

"Fraud Case" means a case in which the offence with which the defendant is charged is primarily, or substantially, founded on allegations of fraud or other serious financial impropriety or involves complex financial transactions or records;

"High Cost Case" means a case where:

i) the trial lasted or is likely to last for 25 days or longer; or

ii) the Total Defence Case Costs in respect of the defendant represented in the case (or group of defendants represented by the same firm of solicitors) amounts to, or is likely to amount to, £100,000 or more;

"High Cost Fraud Case" means a case that is a Fraud Case and a High Cost Case;

"Panel" means the Specialist Fraud Panel;

"Total Defence Case Costs" means the total defence case costs comprising solicitors' costs, counsels' fees, experts' fees, disbursements and VAT;

"Very High Cost Case" means a case where:

i) the trial lasted or is likely to last for 25 days or longer; or

ii) the Total Defence Case Costs in respect of the defendant represented in the case (or group of defendants represented by the same firm of solicitors) amounts to, or is likely to amount to, £150,000 or more;

"Very High Cost Fraud Case" means a case that is a Fraud Case and a Very High Cost Case.

Size of the Panel

1.4 The number of firms on the Panel will not be limited.

Part 2 - Applying for Panel membership

The Criteria

2.1 The criteria for Panel membership are set out in Annex 1a (firm criteria) and Annex 1b (supervisor criteria).

Who can apply?

2.2 The Panel is open to firms of solicitors only.

When, where and how to apply

2.3 Firms may apply for membership at any time by completing the Commission's application form and sending it to the CCU.

Demonstrating compliance

2.4 The onus is upon the Applicant to demonstrate that it meets the Panel membership criteria.

Part 3 - Considering Applications

Annex 1a and Annex 1b - individual cases

3.1 When considering whether requirements F2, F5 and F6 (see Annex 1a) and S1, S2 and S3 (see Annex 1b) have been met, the CCU will consider the details of cases submitted as evidence and decide whether each case is, or is likely to be:

(a) a High Cost Fraud Case;

(b) a Fraud Case;

(c) a High Cost Case;

(d) none of these.

3.2 When categorising a case that has ended prematurely but would have fallen, or is still continuing and is likely to fall, within the definitions in paragraph 3.1, the CCU will consider each case on its particular facts, but factors that may be relevant to the decision will include:

(a) whether the case raised complex issues of law, fact or procedure involving issues such as access to bank accounts, foreign law jurisdictional issues, conspiracy charges or substantial forensic accountancy work;

(b) whether detailed consideration of extensive documentary evidence or unused material was required;

(c) whether the defendant was charged with a large number of offences;

(d) whether the proceedings were transferred to the Crown Court under section 4 of the Criminal Justice Act 1987;

(e) whether a preparatory hearing was ordered in the Crown Court under section 7 of the Criminal Justice Act 1987;

(f) the amount of money involved;

(g) whether the case was investigated or prosecuted by the Serious Fraud Office, Department of Trade and Industry, CPS Special Casework Section, Inland Revenue or Customs and Excise or whether the case was being undertaken by a specially established, dedicated unit within one of these or similar organisations;

(h) the estimated length of trial;

(i) the stage in the proceedings when the solicitors ceased to act for the defendant.

Annex 1a - firm membership criteria - new or developing firms

3.3 Where an Applicant is recently established, or is developing the experience, expertise and capacity required to conduct High Cost Fraud Cases, it may be unable to comply with all of the criteria for Panel membership.

3.4 Where the Applicant is unable to meet the requirements in Annex 1a, provided it meets the criteria in Annex 1b, the approach set out in paragraphs 3.5 to 3.9 will be taken.

New or developing firms - approach

3.5 In order to ensure that the number of firms on the Panel is not limited, as specified in paragraph 1.4, the F2 requirement in Annex 1a may be waived if a firm is classified as new or developing.

3.6 To be classified as new, the Applicant must have been established for no more than 3 years before the date of its application. The CCU must be satisfied that this is genuinely a new practice and not, for example, simply a name change for an existing firm.

3.7 To be classified as developing, the Applicant must be able to demonstrate that it has taken active steps to increase its ability to manage High Cost Fraud Cases. Each application will be judged on its own merits, but examples of evidence that may be used to demonstrate a firm's development include:

- the firm has recruited a fee earner who meets the criteria at Annex 1b;
- the firm has recruited other fee earners with experience of fraud work;
- the firm has established a dedicated unit that deals solely with fraud work.

Taking on fraud cases will not, on its own, be accepted as evidence that the firm is developing in this area.

3.8 A firm accepted by the CCU as new or developing will not be required to meet the F2 requirement at Annex 1a. The Applicant must state in its application that it is applying as a new or developing firm for the application to be considered under paragraph 3.6 or 3.7. If this is not made clear, the application will be assessed in relation to the F2 requirement.

3.9 In addition to meeting the criteria F1, and F3 to F6 at Annex 1a and S1 to S4 at Annex 1b a firm accepted as new or developing shall satisfy the CCU that it is reasonably likely to meet the F2 requirement within 3 years.

Annex 1b Supervisor Criteria

3.10 A supervisor may rely on cases conducted at a previous firm to demonstrate compliance with the supervisor membership criteria. Where the supervisor cannot obtain the information needed to demonstrate compliance because it is held by their previous firm, the supervisor should discuss the matter with the CCU which will make further enquiries before determining whether or not it is satisfied that the criteria have been met.

Status Enquiries

3.11 Panel member firms are required to have passed a Specialist Quality Mark preliminary audit in the crime category or in the case of a new or developing firm have submitted an application and passed a desk top audit, at the office where work on High Cost Fraud Cases is conducted (see Annex 1a, requirement F1). Where the office has only passed a desk top audit, temporary membership of the Panel will be awarded. Exceptionally, a quality marked office may be permitted to place staff in a non-quality marked office to handle a case if appropriately supervised. Where status enquiries have not been undertaken for a particular fee-earner as part of the Specialist Quality Mark application process, status enquiries may be undertaken as part of the Panel application process. An adverse report in response to status enquiries may result in an application being refused.

Decisions

3.12 The CCU may determine the application in such manner as it considers reasonable.

3.13 Where the decision is any other than to allow the application without conditions, written reasons will be given.

Part 4 - Specialist Fraud Panel Committee Appeals

4.1 Where the CCU decision is any other than to allow the application without conditions, the Applicant may appeal to the Specialist Fraud Panel Committee (“the Committee) that is established to hear appeals under these Arrangements in accordance with Annex 2.

4.2 The Applicant shall appeal within 30 days of receipt of the decision against which the appeal is to be made.

4.3 All appeals shall be in writing and shall set out the reasons why the Applicant disagrees with the decision and why it believes, in light of the membership criteria and the reasons given, that it meets the Panel membership criteria. The Commission’s staff may obtain and provide the Committee with information relating to the appeal provided that the appellant receives a copy.

4.4 On receipt of an appeal under paragraph 4.1 the CCU may reconsider its decision, but if following such reconsideration its decision remains the same, it shall refer the matter to the Committee.

4.5 The Committee shall normally consider appeals at the latest within three months of the date on which the appeal was received. The appellant shall have the right to make oral representations and the Committee may, in any event, request personal appearance. The Commission may also be represented at the appeal.

4.6 Before making a decision on an appeal the Committee shall consider:

(a) these Arrangements and the Panel membership criteria annexed to them;

(b) any guidance relating to the Panel;

(c) the Applicant’s original application to join the Panel;

(d) any subsequent submissions from the Applicant;

(e) any information supplied to the Committee under paragraph 4.3

(f) the reasons for the CCU decision.

4.7 The decision of the Committee will be a majority decision. Where there is no majority, the chair will have a second or casting vote.

4.8 The Committee shall make one of the following decisions:

(a) allow the Applicant to join the Panel (this may be subject to such conditions as it considers appropriate);

(b) refuse the application to join the Panel;

(c) any other decision it considers reasonable in the circumstances.

4.9 Where the decision is any other than to allow the appeal without conditions, the Committee shall give written reasons.

Part 5 - Notification of changes and review of Panel membership

5.1 Panel member firms shall notify the CCU of any changes likely to affect their compliance with the Panel membership criteria.

5.2 These changes are likely to be changes in personnel e.g. a supervisor or key fee-earners leaving the firm. “Leaving the firm” includes instances of long-term absence, secondment, or sickness. Other relevant changes may include a partner leaving the firm or a substantial restructuring of a relevant department.

5.3 While the CCU will review membership of the Panel periodically - normally every 12 months - it may review a firm’s membership at any time. The purpose of a review is to determine whether the firm remains eligible for membership of the Panel.

5.4 A firm will cease to be eligible for Panel membership when:

(a) the Panel membership criteria are no longer met; or

(b) there is, in the view of the Commission, evidence of such unsatisfactory performance on cases undertaken under contract with the Commission that continued membership of the Panel is no longer justified.

5.5 On a review of Panel membership, the CCU will make one of the following decisions:

(a) Panel membership should continue;

(b) Panel membership should cease;

(c) any other decision it considers reasonable in the circumstances.

Before making its decision, the CCU may request additional information from the firm.

5.6 If the CCU decides that a firm’s Panel membership should cease, it will give the firm 30 days notice of removal from the Panel and give written reasons for its decision.

5.7 Before the notice under paragraph 5.6 expires or where the decision is other than to allow Panel membership to continue without conditions, the firm may appeal to the Committee and the procedures set out in paragraphs 4.2 to 4.7 and 4.9 shall apply (excluding 4.6(c)). If it does so, the effect of any notice under paragraph 5.6 will be suspended pending the appeal.

5.8 On an appeal under paragraph 5.7, the Committee shall make one of the following decisions:

(a) that Panel membership should continue (this may be subject to such conditions as it considers appropriate);

(b) that Panel membership should cease;

(c) any other decision it considers reasonable in the circumstances.

Annex 1a

Panel Membership Criteria - Firm Membership Criteria and Guidance

The firm must:

F1 have passed a Preliminary Quality Mark Audit at the specialist level in the crime category at the office at which work on High Cost Fraud Cases is conducted

Guidance

A solicitor's office that has a three year General Criminal Contract will have passed a Preliminary Quality Mark Audit.

There is some discretion where the applicant firm or office has no fee-earner who meets Specialist Quality Mark (SQM) Requirement D3 (Supervisors). As the Panel has its own supervisor requirements, any supervisor meeting those requirements will be of the necessary standard.

Exceptionally a quality marked office may be permitted to run a case using staff placed in a non-quality marked office if appropriately supervised.

F2 be able to demonstrate substantial involvement in Fraud Cases and High Cost Fraud Cases during the 5 years prior to the application for Panel membership

Guidance

"Substantial involvement" will be evidenced by satisfactory conduct of the defence in:

5 High Cost Fraud Cases; or

3 High Cost Fraud Cases and 5 Fraud Cases with Total Defence Costs of at least £50,000 each; or

3 High Cost Fraud Cases and 2 Fraud Cases with Total Defence Costs of at least £50,000 each and 5 High Cost Cases.

Whichever combination of cases is submitted, the majority of cases must have been fully prepared for trial.

Where a firm represents two or more defendants on the same indictment, this will be treated as one case for the purposes of this requirement. Where a firm has represented the same client at both a trial and a subsequent re-trial, this will be treated as one case for the purposes of this requirement.

Cases used to evidence compliance with this requirement may be publicly funded or privately funded. The Commission may take account of a number of cases of equivalent subject matter and weight where the firm was prosecuting. However, the majority of the cases used as evidence shall be conducted for the defence.

The mix of cases set out above is intended to provide evidence of the firm's experience, knowledge and capacity to effectively manage Very High Cost Fraud Cases. The CCU has discretion to accept other combinations of cases as long as they represent substantially the same balance of size and complexity and concern fraud or serious financial impropriety. An example would be a drugs case with a significant element of money laundering. It is unlikely that the CCU would accept cases such as handling stolen goods and theft. In exercising discretion, the CCU must be confident in the ability of the firm to effectively manage Very High Cost Fraud Cases.

The CCU will not accept as evidence of meeting this requirement, cases that went to appeal in which the Applicant only acted for the client at the appeal stage.

The CCU will not accept, as evidence of meeting this requirement, any Very High Cost Fraud Case that was conducted by a non Panel firm where a representation order was granted after 1 April 2001 whether the case has concluded or is ongoing. The only exception to this is where the non Panel firm requested and received express authority from the CCU to continue to run the case. Copies of such correspondence shall be provided as part of the application.

F3 demonstrate an awareness and understanding of the importance of cost control and provide evidence of the ability to control costs and of the management systems in place to ensure that costs are controlled

Guidance

Firms must be aware of the importance of controlling costs, and of eliminating unnecessary, inappropriate or untimely expenditure. This will include the ability to plan and focus work effectively, allocate appropriate levels of fee-earners to work of differing levels of difficulty and complexity and ensure that work is not duplicated. It will also include identifying the most appropriate time to do work, neither too early, when it might prove to be wasted because of the changing circumstances of the case, nor too late, when additional costs might be incurred in order to complete it to unnecessarily tight deadlines.

F4 be able to demonstrate a systematic and appropriate use of experts and counsel

Guidance

Firms must be able to provide evidence of:

(a) the appropriate use of experts and counsel, identifying where their use is appropriate and where it is not;

(b) the effective control and management of their work in the case so as to ensure work of the appropriate standard is delivered and duplication avoided;

(c) the ability to ensure that services of the appropriate standard are delivered for the lowest appropriate price.

F5 have access to sufficient fee-earning and administrative staff to manage a very high cost fraud case

Guidance

Firms must be able to demonstrate that they have sufficient permanent staff to manage a Very High Cost Fraud Case. In some circumstances, additional staff may be required. Applicants should be able to demonstrate that they are able to supplement their staff complement at short notice in larger or more complex cases, or at points of particular pressure.

F6 have access to appropriate data and information resources for conducting a very high cost fraud case. The firm must have:

(a) systems in place to sort and analyse complex data

(b) suitable case management systems in place

(c) sufficient support for operating the case management systems

Guidance

Appropriate physical/information resources will vary depending upon the specific case. These may include up-to-date reference materials including relevant journals; case management systems appropriate for large actions; a database of relevant experts; information retrieval systems; appropriate office equipment; e-mail facilities; access to the internet.

Firms must demonstrate that they have arrangements for the management, accommodation, and retrieval of the paper files involved in a very high cost fraud.

The Commission will be looking for evidence of systematic planning and organisation of casework, specifically efficiency of approach in timetabling and in allocating work. We will also be looking for objectivity in case management, and a realistic and cost effective approach to case strengths and weaknesses.

Firm Membership Criteria General Guidance

The Commission will want to consider the history of an Applicant firm’s involvement in Fraud and High Cost Cases. Where appropriate, the CCU will consult with appropriate organisations about any High Cost Fraud Case in which a firm has been involved.

Applicants for membership of the Panel may be subject to status enquiries, including the Office for the Supervision of Solicitors and the Solicitors’ Indemnity Fund.

These criteria are a ‘rolling requirement’. That is, the firm is required to meet each of the requirements at any one time.

Annex 1b

Panel Membership Criteria - Supervisor Membership Criteria and Guidance

The supervisor must:

S1 in the last 5 years, have substantial involvement in High Cost Fraud Cases

<u>Guidance</u>

"Substantial involvement" will be evidenced by satisfactory conduct of the defence in

3 High Cost Fraud Cases; or

2 High Cost Fraud Cases and 3 Fraud Cases with Total Defence Case Costs of at least £50,000 each.

Whichever combination of cases is submitted, the majority of cases must have been fully prepared for trial. The supervisor must have carried out a leading or substantial role in all of these cases. This will involve either:

(a) the overall supervision of the case; or

(b) sole control of a number of important elements of the case, such as

- (i) instructing experts;
- (ii) taking the client's instructions;
- (iii) instructing counsel;
- (iv) identifying and dealing with complex legal issues relating to fraud work.

Where a firm represents two or more defendants on the same indictment, this will be treated as one case for the purposes of this requirement and F2. Where a firm has represented the same client at both a trial and a subsequent re-trial, this will be treated as one case for the purposes of this requirement and F2.

Cases used to evidence compliance with this requirement may be publicly funded or privately funded. The Commission may take account of a number of cases of equivalent subject matter and weight where the firm was prosecuting. However, the majority of the cases used as evidence shall be conducted for the defence.

The mix of cases set out above is intended to provide evidence of the supervisor's experience, knowledge and capacity to effectively manage Very High Cost Fraud Cases.

The CCU will not accept as evidence of meeting this requirement, cases that went to appeal in which the Applicant only acted for the client at the appeal stage.

The CCU will not accept, as evidence of meeting this requirement, any Very High Cost Fraud Case that was conducted by a non Panel firm where a representation order was granted after 1 April 2001 whether the case was concluded or is ongoing. The only exception to this is where the non Panel firm requested and received express authority from the CCU to continue to run the case. Copies of such correspondence shall be provided as part of the application.

S2 in any 2 of the last 3 years, have conducted a total of 700 hours working on: Fraud Cases and/or cases involving serious financial impropriety, such as a drugs case with a significant element of money laundering.

<u>Guidance</u>

Experience of working with Fraud Cases is a critical factor in the quality of the supervisor's own work, and therefore in the experience and expertise they are able to impart to those being supervised. Length of experience is therefore based on the minimum length of time that it is likely to take to acquire the necessary experience.

Experience would ordinarily be gained in a continuous period immediately prior to the audit or application to join the Panel. Career breaks during that period may be acceptable providing the overall requirement can be met.

If requirements S1, S3 and S4 are met in full, then discretion may be applied when assessing a proposed supervisor against this criterion. Discretion will only be applied when a proposed supervisor is involved in a current Very High Cost Fraud Case. A non Panel supervisor may only be involved in a current Very High Cost Fraud Case if the firm and proposed supervisor have express authority from the CCU to run the case.

If discretion is exercised, a lesser number of hours may be accepted as satisfying this criterion provided that the proposed supervisor has conducted a minimum of 600 hours in any 2 of the last 3 years.

S3 in the last 3 years, have conducted 1050 hours of crime work (in addition to that evidenced at S2 above)

Guidance

These 1050 hours are in addition to those evidenced at requirement S2 and represent $^1/_3$ of a practitioner's fee-earning time over the 3 year period.

This work may be on fraud cases or any other crime cases.

S4 for each of the previous 8 years, have held an unconditional practising certificate

Guidance

In some circumstances, the Commission may accept a conditional practising certificate (or a certificate that has had a condition in the previous 8 years).

In some circumstances, the Commission may accept an applicant firm's supervisor who has held a practising certificate for less than 8 years. It is likely this will only include instances where the supervisor has conducted relevant work at a satisfactory level immediately prior to holding a practising certificate, for example, where the supervisor was previously a barrister, or has transferred jurisdiction.

When considering whether to accept a supervisor who has held a practising certificate for less than the required 8 years, the Commission will consider to what extent the supervisor meets requirements S1 to S3.

In any event, the Commission will not accept a proposed supervisor who has less than 6 years post admission experience as a solicitor or less than 6 years post admission experience as a practising barrister.

Supervisor Membership Criteria General Guidance

The supervisor must be a member of the Applicant firm. This normally means that the supervisor is employed as a fee-earner by the Applicant firm. In some circumstances the proposed supervisor may be a consultant for the Applicant firm.

It is envisaged that each firm will employ at least one full time supervisor. There may be occasions where a part time supervisor will be accepted by the CCU. Each application relying on a part time supervisor will be judged on its own merits.

In all cases the following will be required:

(a) written confirmation that the proposed supervisor is employed by or a consultant with the Applicant firm;

(b) written confirmation that the supervisor will supervise cases for no less than 15 hours per week for the Applicant firm;

(c) written acknowledgement from the Applicant firm, that by utilising a part time supervisor, it may not be able to run a full High Cost Fraud caseload, by virtue of the fact that a proportion of the supervisor's time will be spent supervising another firm; and

(d) written acknowledgement from any other firm at which the supervisor undertakes work, that it understands the proposed new arrangement and the effect that it will have on the firm, namely that if the supervisor in question is the only supervisor, it may restrict the number of High Cost Fraud cases it can run.

In any event, no individual or fee-earner may act as a supervisor to more than two firms at the same time.

Applicants for membership of the Panel will be subject to status enquiries, including the Office for the Supervision of Solicitors and the Solicitors' Indemnity Fund.

For the avoidance of doubt, individuals must also meet the following SQM requirements: D3.1 (Named category supervisor), D3.3 (Supervisor skills), D3.4 (Supervisors' legal training), D3.5 (Conditions for supervision), D4 (Operation of the supervisory role).

Annex 2

Specialist Fraud Panel Committee

Functions of the Committee

1. The Specialist Fraud Panel Committee ("the Committee") is appointed under paragraph 4.1 of the Specialist Fraud Panel Arrangements 2002 (“the Arrangements”). The purpose of the Committee is to hear appeals from decisions of the CCU under the Arrangements.

2. Except so far as the procedures of the Committee are regulated by the Commission or these Arrangements, the Committee shall have power to regulate its own procedure and the ruling of the chair on any issue of procedure arising at any meeting shall be final.

Role

3. The role of external members of the Committee is to bring their experience and expertise to bear on decisions under the Arrangements. It is not their role to represent a particular interest group. The Chair of the Committee may, where it is considered appropriate in the particular circumstances of any case, permit any person to attend before the Committee to make representations. Otherwise the Committee will consider cases on the basis of the papers submitted.

Composition

4. When considering applications, the Committee will normally sit as a Committee with a member of the Commission as Chair, one nominee of the Law Society, one representative of the Bar Council, and one official of the Commission, normally a Regional Director.

Location

5. Meetings of the Committee will usually take place in London. There may be circumstances in which a meeting at one of the Commission’s regional offices may be more appropriate.

Frequency of Meetings

6. Meetings of the Committee will be held as required to deal with appeals. Meetings will not normally exceed half a day in duration.

Committee Procedures

7. The Committee will operate in accordance with the Arrangements.

Appointments

8. The initial term of appointment to the Committee will be for two, three or four years. Appointment will be made by the Chair of the Commission on the recommendation of the Chair of the Committee.

   Any defect in the appointment or continued membership of the Committee shall not affect the validity of any decision by the Committee.

Reappointments

9. An external member's appointment to the Committee may be renewed by the Chair of the Committee with the prior approval of the Chair of the Commission for a further successive period of one, two, three or four years at a time provided that the total period of service shall not normally exceed ten years.

Retirement

10. External members of the Committee shall retire upon reaching the age of sixty-five during the term of his or her appointment. The Chair of the Committee, with the prior approval of the Chair of the Legal Services Commission, may waive this requirement unless the member concerned has reached the age of seventy years.

Appointment Criteria

11. All members of the Committee must agree to operate in accordance with the Arrangements and adhere to any guidance given by the Commission on them.

12. Lawyer members should ideally have three years experience of criminal defence work since qualifying and, in particular, of high cost and fraud cases.

13. An applicant to the Committee who is a solicitor should not have any committee decisions currently recorded against them at the Office for the Supervision of Solicitors (OSS). (OSS retain such decisions for five years).

14. An applicant to the Committee who is a solicitor must not have any adverse findings or orders of the Solicitors Disciplinary Tribunal recorded against them.

Propriety Issues

15. Members of the Committee must comply with the codes and rules that are applicable to Commission membership, in particular the rules relating to political activities, confidentiality, conflicts of interest and hospitality and gifts.

Fees and Expenses

16. External members of the Committee who are not attending in their capacity as employees will receive a fee for performing their duties, at the rate agreed with the Lord Chancellor's Department and approved by the Treasury for Funding Review Committee members. Reimbursement of travel and subsistence will be made for actual expenditure incurred up to maxima approved by the Treasury.

Termination

17. The Commission may if it thinks fit remove from office any member of the Committee. If it does so it shall give reasons.