

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

Version 8: October 2005 (revision marked)



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# 1. Introduction

## 1.1 Generally

1. The purpose of this manual is to provide guidance to assist suppliers in formulating claims and for staff conducting audits of police station work undertaken by both own and duty solicitors. This manual should be read in conjunction with the Criminal Bill Assessment Manual. The definitions used in this manual are the same as those contained in the General Criminal Contract. Suppliers are required by the Contract to be familiar with the principles contained in this manual, the Criminal Bills Assessment Manual and the guidance on the assessment of costs of Controlled Work and ensure that claims for work under the Contract are made in accordance with the published guidance (GCC Part C Rule 1.13 note 4). This guidance will be applied by the Commission when assessing claims. The Law Society and other representative bodies have been consulted on the contents of this manual and are consulted each time that it is changed.
2. This manual has been substantively amended to support changes to the GCC implemented on 1 February 2004 ~~and~~, 17 May 2004, 31 October 2004 and 31 October 2005. The transitional arrangements are as follows:

<b>Change</b>	<b>Transitional Arrangements</b>
Implementation of Police Station Fixed Fee for all suppliers	Applies to all new Criminal Investigations commencing after 00:01 1 February 2004
Restrict Duty Solicitor rates to initial period of continual custody following acceptance	Applies to all Police Station attendances taking place after 00:01 1 February 2004
Limit some matters to police station telephone advice only	Applies to all Police Station Advice and Assistance that takes place after 00:01 17 May 2004
Limit post charge attendance at the police station (with exception provision)	Applies to all police station attendances taking place after 00:01 17 May 2004
Restrict scope of Court Duty Solicitor Scheme to exclude individuals not in custody and not charged with an imprisonable offence	Applies to all Court Duty Solicitor sessions taking place on or after 17 May 2004
<u>Implementation of CDS Direct Pilot and Fixed Acceptance Fee</u>	<u>Implemented 31 October 2005. There are no transitional arrangements.</u>
<u>Cap fares/disbursements where travel time is capped to 45 minutes (Part B, paragraph 3.3)</u>	<u>Implemented 31 October 2005. There are no transitional arrangements.</u>

<u>Change</u>	<u>Transitional Arrangements</u>
<u>Restrictions on who may give police station telephone advice (Part B, paragraph 3.7)</u>	<u>Implemented 31 October 2005. There are no transitional arrangements.</u>

3. The previous version of this manual applies for work undertaken prior to the above changes.
4. This manual has been expanded to provide guidance to assist suppliers in formulating claims and for staff conducting audits of court duty solicitor work. New guidance is contained in section 10. This guidance applies to all court duty solicitor sessions taking place on or after 17 May 2004. The title of the manual has been amended to the Police Station and Court Duty Solicitor Costs Assessment Manual to reflect this change.

## 1.2 References

1. The following references are used in this manual:
  - (a) Call Centre: LSC's Duty Solicitor Call Centre Service (provided by First Assist Ltd)
  - (b) CDS: Criminal Defence Service
  - (c) CDS Direct Pilot: CDS Direct is the name give to a project which is piloting the provision of telephone advice to detained clients by employed advisors.
  - (~~e~~)(d)GCC or Contract: CDS General Criminal Contract
  - (~~d~~)(e)Duty solicitor: A solicitor or employed barrister who is a member of a duty solicitor scheme and acting in that capacity
  - (~~e~~)(f)LSC: Legal Services Commission
  - (~~f~~)(g)Own solicitor: A solicitor who provides Police Station Advice and Assistance to a client other than as a duty solicitor
  - (~~g~~)(h)PACE: The Police and Criminal Evidence Act 1984
  - (~~h~~)(i)Supplier: The holder of a CDS General Criminal Contract
  - (~~i~~)(j)UFN: Unique File Number

## 2. Regulatory Framework

### 2.1 Regulations

1. Police Station Advice and Assistance is provided under Regulation 4 of the Criminal Defence Service (General) (No. 2) Regulations 2001 (as amended). This should be read alongside Section 13 of the Access to Justice Act 1999 which requires the LSC, in the context of police station work, to fund such Advice and Assistance as it considers appropriate.
2. Police Station Advice and Assistance can be given either by a duty solicitor or the client's own solicitor. The CDS can only pay for advice if that supplier holds a Contract.

### 2.2 Scope

1. The scope of Police Station Advice and Assistance is defined in the Criminal Investigations Class of Work (GCC Part A Section 2.2). Police Station Advice and Assistance, Police Station Telephone Advice and Police Station Attendance (subject to certain limitations) can be provided to a client who is:
  - (a) arrested and held in custody at a police station; or
  - (b) a volunteer; or
  - (c) a member of the armed forces being interviewed in connection with a Serious Service Offence; or
  - (d) is detained under Schedule 7 of the Terrorism Act 2000; or
  - (e) is the subject of an identification procedure carried out by means of video recordings who is not present at a police station at the time the procedure is carried out.
2. Criminal Investigations consist of the following units of work:
  - (a) **Advice and Assistance** (i.e. freestanding Advice and Assistance) to a Client involved in a Criminal Investigation, other than Advice and Assistance under paragraphs (b) to (e) below.
  - (b) **Police Station Telephone Advice**, that is telephone Advice and Assistance, where there is **no** attendance at the police station, to a Client who:
    - i) is arrested and held in custody at a police station; or
    - ii) is a volunteer; or
    - iii) is being interviewed in connection with a serious service offence; or
    - iv) is detained under Schedule 7 of the Terrorism Act 2000;

except that, during the CDS Direct Pilot, all CDS Direct Pilot Cases are excluded from such Police Station Advice (and no payment in respect of them will be made).

- (c) **Police Station Attendance**, that is Advice and Assistance, where there is an attendance at the police station, to a client who:
- i) is arrested and held in custody at a police station; or
  - ii) is a volunteer; or
  - iii) is being interviewed in connection with a serious service offence; or
  - iv) is detained under Schedule 7 of the Terrorism Act 2000; or
  - v) is the subject of an identification procedure carried out by means of video recordings who is not present at a police station at the time the procedure is carried out.
- (d) **Advocacy Assistance** in a magistrates' court or before a judicial authority in connection with an application for a warrant of further detention, or for an extension of such a warrant, under Sections 43 and 44 of the Police and Criminal Evidence Act 1984 or paragraphs 29 or 36 of Schedule 8 of the Terrorism Act 2000.
- (e) **Advocacy Assistance** before a judicial officer on an application to extend detention in military custody under the Armed Forces Discipline Act 2000.
- (f) **Advocacy Assistance** in the magistrates' court in connection with an application to vary bail conditions imposed by police under Section 47 (1E) of the Police and Criminal Evidence Act 1984, as amended by the Criminal Justice Act 2003.

(GCC Part A Section 2.2)

## 2.3 Police Station Advice and Assistance

1. The term "Police Station Advice and Assistance" is defined in the Contract and means Police Station Telephone Advice or Police Station Attendance.
2. Police Station Advice and Assistance (i.e. all Advice and Assistance provided to an individual who is arrested and held in custody at a police station or other premises or is a volunteer at a police station or other premises where a constable is present) is available without reference to the client's means (Regulation 5 of the Criminal Defence Service (General) (No. 2) Regulations 2001). If, however, the circumstances making advice necessary do not fall within the definition above, the only way that publicly funded advice can be provided is under freestanding Advice and Assistance which is provided under Regulation 4 but is subject to the client's financial eligibility. Freestanding Advice and Assistance may be given over the telephone provided that the criteria in GCC Part B Rule 2.3 are met. However, if the work falls within the scope of the Police Station Advice and Assistance scheme (see paragraphs 2.2.2(b) and (c) above) it shall be claimed as Police Station Advice and Assistance.

3. A supplier will additionally be paid for the time spent travelling and waiting and disbursements reasonably incurred. The exact rates of payment will depend on whether the supplier is instructed as a duty or own solicitor. If a duty solicitor, it will also depend on whether the Police Station Advice and Assistance is given within social or unsocial hours and whether the client is under arrest for a 'serious offence'. If falling outside Police Station Advice and Assistance, the advice given will be paid at the freestanding Advice and Assistance rates if the client is financially eligible.

## **2.4 Unique File Numbers**

1. All Police Station Advice and Assistance provided to one client is counted as a single Matter whether or not the investigation is extended to include other alleged offences (GCC Part B Rule 2.11(a)). Suppliers must assign a Unique File Number for each such Matter. A separate UFN must be assigned to each individual client advised at the police station even if they are co-suspects. This is because a separate claim is made for each client and the time spent must be apportioned where necessary. Separate UFN's should be allocated if separate matters are being investigated e.g. the client is advised in connection with a theft offence and the next day he or she is back at the police station in connection with an unrelated alleged assault. At the proceedings stage, a lead UFN must be assigned to all charges that will form a "case" for standard fee purposes.
2. If only Police Station Telephone Advice is given then the telephone note should be held on a central file by the supplier. Each note will require a UFN to be assigned to it (GCC Part B Rule 1.4).



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

### 3.1 Clients Arrested and Held in Custody

1. Police Station Advice and Assistance may be provided if a person is under arrest by police or Customs and Excise ~~irrespective of whether he or she is actually in custody at a police station or elsewhere.~~ If the client is not under arrest then he or she may be a volunteer (see 3.2 below) but Ppayment cannot be made if a constable is not present even though PACE may apply e.g. investigations by local authority, gas, water or electricity investigators, Post Office, Benefits Agency etc.
2. “Constable” is defined in the Contract as “*a police officer, a British transport police officer, an officer of HM Customs and Excise and any other official with a power of arrest*”. Advice can be provided, subject to the client’s financial eligibility, under freestanding Advice and Assistance in cases where a constable is not present.

### 3.2 Volunteers

1. The Criminal Defence Service (General) No. 2 Regulations 2001 defines a “volunteer” as “a person who, for the purposes of assisting with an investigation, attends voluntarily at a police station or customs office, or at any other place where a constable or customs officer is present, or accompanies a constable or customs officer to a police station or a customs office or any other such place without having been arrested”.
2. Volunteers can include either suspects who attend voluntarily or individuals who are not suspects in the investigation but possible witnesses. A volunteer is entitled to non means tested Police Station Advice and Assistance. However, any other individual who is a witness but does not meet the definition of a “volunteer” must require advice regarding self-incrimination (Regulation 4(i) of the Criminal Defence Service (General) (No. 2) Regulations 2001) to be entitled to freestanding Advice and Assistance.

**Point of Principle DS6** states:

*“A solicitor attending a client making a voluntary attendance at a place other than a police station in connection with an investigation by an agency other than the police force is not covered by the advice and assistance at the police station scheme unless a constable is present and taking part in the proceedings.”*

3. It is important to note that an interview with a volunteer can take place at any premises. It does not have to be a police station and could be elsewhere. The crucial element of the definition is that a constable must be present. A constable includes, as well as a police officer, an officer of HM Customs & Excise, a British Transport police officer or any official with a power of arrest. It does not, however, include other investigators for example, local authority trading standards, Benefits Agency or Inland Revenue fraud investigators, even if they have power to search premises. This is also true even if the interview must be conducted in accordance with PACE. The requirements of PACE affect all non-police investigators including government departments such as the DTI, Benefits Agency, SFO, the Post Office and others.

4. If a solicitor/representative attends with a volunteer at an interview conducted by investigators who are neither from Customs and Excise nor the police, and there is no constable present, the advice falls outside Police Station Advice and Assistance. Remuneration for such advice can only be provided under freestanding Advice and Assistance if the client is financially eligible or by private funding (GCC Part B Rule 3.5).

**Point of Principle DS3** states:

*“The definition of “volunteer” ...does not exclude a person assisting police with enquiries at a police station or at any other place where a constable is present who is not at that time under suspicion themselves.*

*A legal representative may be remunerated for attending such persons providing that... [the requirements that the work has been actually and reasonably done and the time spent reasonable] are satisfied”.*

5. Volunteers may include not only those who are suspects but those who are not suspects but potential witnesses. A witness would normally be asked to give a statement and may require Police Station Advice and Assistance at the time of the attendance to do so. It is not, however, usual for legal advice to be given. If the witness does not meet the definition of “volunteer” there must be some complicating factor or circumstances that makes it reasonable for assistance to be given to the witness and the witness must require advice concerning self-incrimination if a statement is given, (which could result in the witness being charged with an offence) (Regulation 4(i) of the Criminal Defence Service (General) (No. 2) Regulations 2001).

### **3.3 Serious Service Offence**

1. A serious service offence is defined in the Contract as an offence under any of the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957 which cannot be dealt with summarily or which appears to an interviewing service/military policeman to be serious. There are three important matters of note:
  - (a) Legal advice is not automatically available to service suspects for summary only offences.
  - (b) Where a military offence has been committed the interviewing police force will be service or military police (rather than a civilian police force).
  - (c) Military suspects can only be attended by a solicitor and are not able to be advised by a solicitor’s representative unless the representative is accredited and a solicitor (GCC Part B Rule 3.4 (own solicitor) or Part B paragraph 8.2.11 (duty solicitor)).

### **3.4 Video Identification Parades**

1. The Criminal Defence Service (General) (No. 2) (Amendment No. 2) Regulations 2002 came into force on 2 December 2002. The Regulations state that all Advice and Assistance:

*“provided in respect of an individual who is the subject of an identification procedure carried out by means of video recordings in connection with that procedure, notwithstanding the individual’s non-attendance at a police station at the time the procedure is carried out”*

may be granted without reference to the financial resources of the individual. This amendment is supported by a consequential change to the General Criminal Contract that came into effect on the same date (GCC Part A paragraph 2.2.1(c)(v)).

2. The effect of this change is that Police Station Advice and Assistance may be given by a solicitor in the absence of a client when a video identification procedure takes place. The circumstances when a solicitor may attend the police station in the absence of a client include when the witness is shown the video and asked to identify the suspect. The solicitor may also attend when the images to be used are initially selected by the police. If the client is not in detention at the relevant time, Police Station Advice and Assistance can now be provided following the above amendment. Claims for such work will be assessed on the basis of reasonableness and whether the solicitor's attendance in the absence of the client materially progressed the case.



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

### **4.1 Introduction**

1. About 40% of arrested suspects ask for legal advice. Two-thirds ask for a named solicitor (the own solicitor) whilst one-third request the duty solicitor.

### **4.2 Duty Solicitor Arrangements**

1. The LSC's Duty Solicitor Arrangements 2001 cover the selection and discipline of duty solicitors and the administration of the duty solicitor schemes which cover England and Wales.

### **4.3 General Criminal Contract**

1. The Contract specifies the services to be provided by duty solicitors at the police station in Part B, Section 8 of the Specification. **Appendix 1** sets out these services. The Appendix also specifies which of these services are also required of own solicitors.

### **4.4 Call Centre**

1. The LSC has a contract with First Assist Ltd to receive requests from any police station in England and Wales for a duty solicitor and to deploy the relevant duty solicitor to provide advice or where appropriate for the duration of the CDS Direct Pilot to pass any call to CDS Direct pilot telephone advisers.

### **4.5 Duty Solicitors**

1. Duty solicitors have to be accredited under Stage 1 of the Law Society's Criminal Litigation Accreditation Scheme (CLAS). To be accredited the solicitor must have either been "passported" on the basis that he or she was a duty solicitor immediately prior to the introduction of CDS on 2 April 2001 (during the period 1 January – 1 April 2001) or have passed the Law Society's accreditation requirements.

### **4.6 Rota and Panel**

1. England and Wales are covered by over 300 duty solicitor schemes. In urban areas a duty solicitor is usually on rota duty for all or part of the day. Rota duty solicitors are required to accept duty cases unless they are already dealing with a previous duty case or there is a conflict of interest (GCC Part B paragraph 8.2.2). In areas where there is less demand there will be a panel arrangement. The Call Centre telephones the solicitors on the panel until finding one willing to take the case. Panel duty solicitors are not obliged to take a duty case offered to them. Rota but not panel duty solicitors are paid a stand by payment. Many schemes operate a mixture of rota and panel e.g. there may be a rota solicitor on duty overnight and at the weekend and a panel in operation during office hours.

## 4.7 Duty Solicitor Cases

1. The following should be treated as duty solicitor cases where: Duty Solicitor work attracts higher rates than own solicitor work, and entails different service obligations (for instance, it may not be undertaken by a probationary representative). If work is deemed to be Duty Solicitor work, then Duty Solicitor rates apply and you must comply with the relevant service obligations.
2. Work is always deemed to be Duty Solicitor work if both (a) and (b) apply:
  - (a) The case is accepted from the Duty Solicitor Call Centre, or accepted at the police station as duty solicitor and notified to the Call Centre, and
  - (b) The work takes place before the end of the duty period (for rota cases) or is initial advice (for panel and backup cases).
3. You may deem work to be Duty Solicitor work if either (a) or (b) applies.:
  - (a) The work takes place during a duty period (however the case was accepted), or
  - (b)
    - (i) The case is accepted from the Call Centre or accepted at the police station as duty solicitor and notified to the Call Centre, and
    - (ii) The work is done during the initial continuous period of custody.
4. All other attendances shall be treated as own solicitor.

### **Examples of the split between duty and own solicitor work**

- (a) Duty Solicitor is on rota from 6 pm to 6 am: Case is accepted from the Call Centre at 4am and continues after the end of the rota period at 6am. If the supplier continues to meet the requirements of the Duty Solicitor Arrangements and other contractual requirements for duty work, then duty rates can be claimed until the end of the client's initial period of detention. Alternatively, once the duty period ends at 6am and initial advice has been provided by the duty solicitor (or accredited representatives if CDS Direct have been involved), the supplier may convert to an own client basis, send a probationary representative if the matter is non indictable only and claim own client rates from that point.
- (b) For panel and back up calls, once initial advice has been provided by the Duty Solicitor, the supplier may continue to meet the contractual requirements for duty work and claim duty rates or may convert to an own client basis and claim own client rates.
- (a) ~~The duty solicitor has been requested and the request has been passed to the duty solicitor by the Call Centre.~~
- (b) ~~The duty solicitor is already at the police station and the police ask him or her to take an additional case where a suspect has requested the duty solicitor. The duty solicitor is required to notify the Call Centre of such cases so that it can make a record.~~

- ~~(e) An own client has contacted his or her solicitor whilst the solicitor happens to be on rota (but not panel) duty.~~

#### 4.8 Own Solicitors

1. ~~At present any solicitor working for a contracted supplier (whether or not a duty solicitor) may give Police Station Advice and Assistance where it is an own client case.~~Own solicitor police station attendances and police station telephone advice may only be undertaken by a Representative (including a Solicitor who is also a Representative), or
  - (a) (for work done before 00.01 on 1 November 2005) any Solicitor;
  - (b) (for work done after 00.01 on 1 November 2005 but before 00:01 on 1 November 2006) a Solicitor who is on the Police Station Register and has not been suspended;
  - (c) (for work done after 00.01 on 1 November 2006) a Solicitor holding the Police Station Qualification under the Law Society's Criminal Litigation Accreditation Scheme;
  - (d) (for work done on or after 00.01 on 1 November 2005, where the firm is a member of the Specialist Fraud Panel and the offence for which the client has been arrested is primarily or substantially based on allegations of fraud or other serious financial impropriety or involves complex financial transactions or records) a Solicitor.

#### 4.9 Representatives

1. The Law Society's Police Station Accreditation Scheme accredits non-solicitors to give Police Station Advice and Assistance. Solicitors may also become accredited where they do not have enough experience to become duty solicitors. The representative may be accredited or probationary. CDS Policy Team maintains a register of all representatives so there should be no doubt about whether a particular person is a currently registered representative. If the representative is not on the register for the day the advice was given then no payment can be made for any Police Station Advice and Assistance given.

#### 4.10 Probationary Representatives

1. Probationary representatives are non-solicitor representatives who are not yet fully accredited. Probationary representatives cannot advise:
  - (a) In connection with duty solicitor cases.
  - (b) On indictable only cases except where the police start to investigate on the basis of an either way or summary-only case and they subsequently decide to investigate an indictable only offence and there is no suitable break in the interview for a solicitor or accredited representative to take over (see **Appendix 2** for guidance issued by the Law Society on indictable only cases). If a probationary representative advises the client on an indictable only matter, the claim will be nil assessed unless it was not clear at the point of initial attendance that the matter was indictable only, in which case payment is allowed up until the point when it became clear. The custody record may be used to establish this. The onus is on the supplier to justify why a probationary representative continued to advise in such circumstances. Payment will not usually be allowed for any work in relation to an indictable only matter.

2. Since 1 April 2003, a probationary representative may only provide Police Station Advice and Assistance for the firm at which his or her supervising solicitor is based (GCC Part B Rule 3.3). This is because such staff are still in a training role and are therefore likely to require closer supervision.

#### 4.11 Freelance Representatives

1. Many police station attendances are undertaken by representatives who ~~work for more than one local supplier~~ are not employees of the supplier claiming for the work. We refer to them collectively as “freelance representatives”. The distinction between a representative directly employed by ~~a~~ the supplier and one who is a self-employed “freelance” representative is complicated (GCC Part B Section 8.7). If a representative is acting as a freelance representative on an own solicitor case then ~~he or she~~ the supplier should comply with the following requirements which should be evidenced on file:
  - (a) The representative must be a solicitor complying with section 4.8 above or a probationary or accredited representative currently registered with the LSC.
  - (b) Before attending the police station, the representative must have the telephone number of the conducting solicitor i.e. the supplier’s solicitor who has arranged for the representative to take the case (but note that the supplier may arrange for the freelance representative to take cases overnight in which case the supplier may only receive a report on the case after advice has been given).
  - (c) The representative must be able to contact one of the supplier’s solicitors in case guidance is required.
  - (d) A written report should be submitted to the supplier the next day. A failure to comply strictly with this requirement in isolated instances e.g. illness, should not result in any costs being disallowed.

(GCC Part B Rule 3.3)

2. A freelance representative can be deployed on a duty solicitor case provided that:
  - (a) He or she is an accredited representative.
  - ~~(b) He or she is in the full or part time employment of the supplier (GCC Part B paragraph 8.2.1 and Section 8.7).~~
  - ~~(c)~~ (b) The duty solicitor has given the initial advice (GCC Part B paragraph 8.2.6(a)).
  - ~~(d)~~ (c) He or she complies with the guidance at 4.11.1(b) to (d) above.

#### 4.12 Solicitor Agents

1. A solicitor agent may be used to undertake police station work (GCC Part C Rule 1.18 note 5) subject to the rules about designation of fee-earners (GCC Part D Rules 3.2 and 5.4). Cost effectiveness is a relevant factor in determining whether an agent should be instructed (Point of Principle CRIMLA 31 as amended).

#### 4.13 When Does the Duty Solicitor Rate Stop?

1. ~~Paragraph 4.7 above identifies what must and may be deemed duty solicitor work. Duty solicitor rates may be claimed when a duty solicitor or accredited representative is acting as such in accordance with the GCC (Part E Notes for Guidance below table 2.2) and the Duty Solicitor Arrangements 2001 and the claim relates to:~~
  - (a) ~~attendances undertaken throughout a duty period; or~~
  - (b) ~~attendances that take place after acceptance of a matter until the point when the client is released from the initial continuous period of custody.~~
2. ~~Any subsequent Police Station Advice and Assistance provided on the same matter must be claimed at own solicitor rates. After the initial continuous period of custody the matter is deemed to be own solicitor and the duty solicitor may delegate further attendances to a solicitor or probationary representative (see section 4.10 for restrictions). Note this change overrides Point of Principle DS1.~~
3. ~~In addition a duty solicitor may convert a matter from duty to own solicitor after the end of the duty period.~~

##### **Examples:**

- (a) *Client is arrested and taken to the police station. The client requests the duty solicitor and receives telephone advice. The police are not ready to interview until after the end of the duty period but the original duty solicitor is available and attends the interview. Following the interview the client is bailed to return two weeks later. The duty solicitor agrees to attend the police station with the client on the bail to return date.*

The CDS Supplier may claim duty solicitor rates for the duty solicitor attending the first interview at the police station but must claim own solicitor rates for the attendance on the bail to return date.

- (b) *Client is arrested and taken to the police station. The client requests the duty solicitor and receives telephone advice. As the police are about to interview, the duty solicitor attends the police station. Following interview the duty solicitor leaves the police station but attends again the next day for a further interview. Following the second interview the client is bailed to return two weeks later. An accredited representative employed by the same CDS Supplier attends the police station with the client on the bail to return date.*

The CDS Supplier may claim duty solicitor rates for the first two attendances that the duty solicitor makes prior to the client's release from the police station. Own solicitor rates must be claimed for the accredited representative attending on the bail to return date.

- (c) *Client is arrested and taken to the police station. The client requests the duty solicitor and receives telephone advice. The police are ready to interview and the duty solicitor attends the police station. Following the interview the client is bailed to return two weeks later. The duty solicitor advises the client that no one from his or her firm is available to attend the bail to return date and advises the client to request the duty solicitor if he or she requires assistance.*

*When the client attends the bail back he or she requests assistance from the duty solicitor. The duty solicitor (from a different CDS Supplier) attends the police station to assist the client at the bail back.*

The first CDS Supplier would be able to claim duty solicitor rates for the first attendance at the police station. The second CDS Supplier would be able to claim duty solicitor rates for attending the bail to return, as the client was not released from police custody between the acceptance of the matter by the second duty solicitor and that duty solicitor's attendance at the police station.

4.2. The same arrangements also apply to volunteers, even though they will not be held in custody. For volunteers substitute continuous period of custody with continuous period of attendance at the police station.

#### 4.14 Duty Solicitor Service Obligations

1. A duty solicitor is expected to provide initial advice and must arrange attendance at the police station by a duty solicitor or accredited representative in the following circumstances: The only exception to be where CDS Direct has been involved in which case initial contact with the client by the supplier can be undertaken by either a Duty Solicitor or an Accredited Representative.
  - (a) to provide advice and attend all police interviews where the client is arrested for an ~~arrestable~~ offence ~~(for examples of arrestable offences see Appendix 11)~~;
  - (b) an identity parade, group or video identification;
  - (c) where the client complains of serious maltreatment by the police;
  - (d) to advise on the caution given when the client is charged with an ~~arrestable~~ offence (the duty solicitor must consider whether attendance is necessary);
  - (e) to provide representation in connection with an application for a warrant of further detention.

The above list is not exhaustive but sets out the minimum requirements specified in the Contract (GCC Part B Rule 8.2.6). The duty solicitor may also consider in appropriate cases whether to take further steps.

#### 4.15 Who Can Attend the Police Station?

1. The following table shows who may undertake work on a duty solicitor and own client basis. If attendance is not undertaken by the appropriate individual then payment will be disallowed.

	Duty solicitor case	Own solicitor case
Receiving the initial call from the Call Centre (duty solicitor case) or police station (own solicitor case)	i) Duty solicitor on relevant rota or panel (Part B 8.2.2/4)  ii) Another police station duty solicitor employed by the	Any <del>person member of the supplier's staff</del>

	supplier (Part B 8.2.3)  <u>iii) Where CDS Direct has been involved the call may be accepted by either a Duty Solicitor or an Accredited Representative.</u>	
Giving initial advice	i) Duty solicitor on relevant rota or panel (Part B 8.2.11(a))  ii) Another police station duty solicitor employed by the supplier (Part B 8.2.3)  <u>iii) Where CDS Direct has been involved initial contact with the client by the supplier can be undertaken by either a Duty Solicitor or an Accredited Representative.</u>	Any solicitor <del>with a practising certificate</del> <u>complying with section 4.8 above</u>  Probationary representative (except indictable only offences)  Accredited representative
Attending at police station  (subject to certain limitations)	i) Duty solicitor (as above) (Part B 8.2.11(b))  ii) Accredited representative (Part B 8.2.11(b) and (c))	Any solicitor <u>complying with section 4.8 above</u> <del>with a practising certificate</del>  Probationary representative (except indictable only offences)  Accredited representative

2. The Contract and the Duty Solicitor Arrangements 2001 also provide that:
- (a) A duty solicitor can work, as a duty solicitor, for only one supplier (Arrangements 4.14).
  - (b) It is acceptable for an individual to work as a duty solicitor for one supplier and to work as a representative for other suppliers (Arrangements 4.14 and GCC Part B Rule 3.3).
  - (c) An accredited representative ~~(both accredited and probationary)~~ can work for more than one supplier (GCC Part B Rule 3.3).

- (d) For own client work, the supplier may delegate advising on the matter to a representative i.e. the supplier need not receive the initial call from the client nor provide any advice. These functions can be undertaken by the representative who, as seen above, can work for several suppliers (GCC Part B Rule 3.3).
- (e) For duty work, a duty solicitor must always provide the initial advice (either by telephone or, where permitted, in person) before an accredited representative may become involved (GCC Part B paragraph 8.2.6(a)). The only exception to be where CDS Direct has been involved in which case initial contact with the client by the supplier can be undertaken by either a Duty Solicitor or an Accredited Representative.
- (f) For own client work, a probationary representative may not deal with indictable only matters (GCC Part B Rule 3.3). See paragraph 4.10.1(b) for the position where a matter becomes indictable only.

#### **4.16 Duty Solicitor Serious Offence Rates**

1. For work done on or after 31 October 2004, higher rates are payable for work if all four of the conditions below apply. The conditions are:
  - (a) The work is duty solicitor work (see GCC Specification E 2.2 paragraph 16 for the definition); and
  - (b) The client is under arrest for one of the listed offences (including any offence if he or she is accused of possessing a firearm, and any offence if he or she is detained under Section 41 of the Terrorism Act 2000); and
  - (c) The attendance is personally undertaken by a duty solicitor employed by the firm accepting the case, or a duty solicitor who is a partner in the firm accepting the case; and
  - (d) The firm was not assessed as category 3 at its last audit.
2. The list of offences is exhaustive. If the offence is not on the list, it is not a 'serious offence' for these purposes.
3. Note that the rates only apply while the client is under arrest for these offences (or while he or she is accused of possessing a firearm, or while he or she is detained under Section 41 of the Terrorism Act 2000). If the reasons for detention change mid-way through (e.g. a client is originally arrested for robbery, but the allegation later changes to theft) then the rates will apply only for the relevant portion of the attendance.
4. The definition of 'employment' for these purposes is strict. The duty solicitor must legally be an employee of, or a partner in, the firm. (This does not necessarily mean that he or she is based at the same office. If the duty solicitor is based at a different office of the same firm, then he or she is counted as an 'employee' for these purposes.)
5. Category 3 firms may claim serious offence rates if the time limit for appealing their assessment has yet to expire, or if an appeal was made within that time limit and has not been finally determined.

#### 4.17 CDS Direct Pilot

1. CDS Direct is a project which is piloting the provision of telephone advice to detained clients by employed advisors. The pilot will cover Liverpool region (all Duty Solicitor Schemes) and the Boston (Lincolnshire) scheme for all police station work excluding indictable only cases and those cases where the time of interview is known at the point that the request for a duty solicitor is made.
2. The new Community Justice Court in Liverpool will be excluded from the pilot.
3. The pilot will cover all duty solicitor work nationally where one of the following conditions are met:
  - (a) Client is detained in relation to a non-imprisonable offence;
  - (b) The client is arrested on a bench warrant for failing to appear and is being held for production before the court, except where the solicitor has clear documentary evidence available that would result in the client being released from custody in which case attendance may be allowed;
  - (c) The client is 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/drunk in charge of a motor vehicle (Section 4 Road Traffic Act 1988)
  - (d) The client is detained in relation to breach of police or court bail conditions.
4. However, in the case of (a) to (d) above the call may be referred to the Duty Solicitor if one of the following exceptions applies:
  - (a) An interview or 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 requires an interpreter or is otherwise unable to communicate over the telephone;
  - (d) The client complains of serious maltreatment by the police;
  - (e) The investigation includes another offence for which attendance is allowable;
  - (f) The Duty Solicitor is already at the same Police Station.

5. Where, following advice by CDS Direct, it becomes apparent that the client needs the attendance of a solicitor in person for one or more of the reasons shown above, the matter will be referred back to the Duty Solicitor Call Centre. The Call Centre will contact the Duty Solicitor and advise him or her of the time when the next anticipated procedure is due to take place so that he or she can arrange attendance for that time.

## **5. Immigration**

### **5.1 Generally**

1. The GCC Part B Rule 3.6 states:

*“Where you give Police Station Advice and Assistance and it is apparent, or becomes apparent, that an immigration offence may have been committed or that an immigration issue arises, you shall give Advice and Assistance to the client up until the point where the immigration authorities take over conduct of the investigation. You may continue to advise after this point if the client remains in detention and requires advice, however you should consider whether it is practicable to refer the immigration offence or issue to a supplier with a contract in the immigration category of work in the local area (which may include your firm).”*

### **5.2 Immigration Offence Cases**

1. The Contract covers cases where police station advice is required by clients being held in connection with the investigation of an immigration offence or where an immigration issue arises. Rota duty solicitors must accept such cases when they are referred to them by the Call Centre and failure to do so could result in suspension or removal of the duty solicitor under paragraph 5.4(d) of the Duty Solicitor Arrangements 2001. An immigration offence means a breach of the Immigration Acts e.g. illegal entry, over staying.

### **5.3 Immigration Authorities Cases**

1. If the immigration authorities are involved with a case and no criminal offence is being investigated then there is no requirement under the Contract to provide advice i.e. if the suspect had no right to free legal advice under PACE as the police were merely holding him or her on behalf of the immigration authorities who have separate administrative powers to detain.
2. Police Station Advice and Assistance may not generally be given where:
  - (a) An individual is detained after entry and served with illegal entry papers or a notice of intention to deport.
  - (b) An individual is detained by the immigration authorities on entry.
  - (c) An individual is arrested by the police on behalf of the immigration authorities and no criminal allegations are made.
3. Such cases should be dealt with by an immigration contractor. However, if the case has started on the basis of an offence being investigated, the supplier may continue to deal with the case after the immigration authorities become involved provided consideration has been given to referral to an immigration contractor but this has proved impracticable.

## **5.4 Payment for Immigration Cases**

1. Suppliers will be paid for immigration police station advice except where the Commission considers that the case should and could have been referred to an immigration contractor after the immigration authorities became involved. Assessors must bear in mind that in many cases an immigration contractor will not be available to take over the matter.

## 6. Advice abroad

### 6.1 English Law

1. The statutory framework requires that Advice and Assistance can only be given in a matter of English law (Section 109(6) of the Access to Justice Act 1999). If a suspect is being investigated or prosecuted by authorities outside of England and Wales, no payment can be made.

### 6.2 Investigations Abroad

1. If a police force in England or Wales or Customs and Excise (see section 3.1) are investigating a case and require investigations to be conducted abroad e.g. to interview a witnesses who is abroad or to conduct an identification parade, then payment can be made subject to the usual rules as to whether the expense is reasonable (GCC Part B Rule 7.9 **Appendix 7**) except for investigations by services police, which are not covered if an attendance takes place outside the UK (GCC Part A Rule 2.2.2). However, in the case of a witness who does not meet the definition of a volunteer (see section 3.2) it must be demonstrated that he or she requires advice regarding the risk of self-incrimination (Regulation 4(i) of the Criminal Defence Service (General) (No. 2) Regulations 2001). Also note that it is possible to appoint a solicitor agent in connection with Police Station Advice and Assistance (GCC Part C Rule 1.18.5)

### 6.3 Work Undertaken Abroad

**Point of Principle CRIMLA 62** states:

*“When a solicitor undertakes work in a foreign country he or she may be remunerated for what is reasonable waiting time depending on the facts and circumstances of the case, including whether, prior to leaving the United Kingdom, the solicitor made all reasonable efforts to contact witnesses and, where possible, make convenient appointments.”*

### 6.4 Scotland

1. Occasionally a suspect is arrested in Scotland and police from England decide to interview him or her in Scotland about an offence to which English law applies i.e. an offence subject to the law of England or Wales. Police Station Advice and Assistance may be used for this purpose but the solicitor should first ask the police whether they are willing to bring the suspect back to England or Wales before interviewing. If not, the solicitor may travel to Scotland having considered whether a solicitor nearer the client should be asked to attend e.g. it may be reasonable for a solicitor based in Carlisle to attend a client in Scotland but not one located in London. These provisions also apply where services police conduct a PACE interview in Scotland under English law.

### 6.5 Pre-charge Advice to Services Personnel Outside the UK

1. The following guidance will apply to cases where a duty or own solicitor is acting and is employed by or a partner in a firm with a CDS Contract:

- (a) Does the Advice and Assistance concern a matter of English law? The LSC cannot pay if an investigation is conducted under the laws of another country (Section 109(6) of the Access to Justice Act 1999). Investigations under the Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957 are investigations concerning English law.
- (b) Is the advice required in Scotland or Northern Ireland? The LSC cannot pay for services cases in Scotland or Northern Ireland unless the investigation concerns English law. Otherwise it is the responsibility of the legal aid organisations covering those countries.
- (c) Is the offence being investigated a serious service offence? This means an offence under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957 which cannot be dealt with summarily or which appears to interviewing services police to be serious. Whether or not a case is serious is for determination by the services police.
- (d) Is the advice given by an appropriate person? Advice can only be given to services personnel by a duty solicitor or an accredited representative who is a solicitor (GCC Part B paragraph 8.2.11(c)). The same applies to own solicitor cases (GCC Part B Rule 3.4). This means that a non-solicitor representative (whether or not accredited) cannot advise services personnel and get paid for it by the Commission.
- (e) Does the case include an attendance outside the UK? If so, it is not within the scope of the Contract (GCC Part A paragraph 2.2.2).

~~(e)~~(f) The LSC will assess claims “*on the basis of determining the reasonableness of the work done and whether the time spent is reasonable in accordance with the requirements of the Contract and Guidance and applying the remuneration rates set out in Part E*” of the Contract Specification. Work must be supported by “*appropriate evidence on the file*” and “*disbursements will be assessed on the basis of determining whether they were reasonably incurred and are reasonable in amount*” (GCC Part C Rule 1.13).

~~(f)~~(g) The solicitor should consider whether it is appropriate to give advice by telephone or by video link. Use of a video link would particularly apply to preliminary advice to the client and where there is a custody hearing before a judicial officer and should also be considered for an interview by services police. The solicitor must demonstrate that he or she has undertaken a cost/benefit analysis of the options available.

~~(f)~~ If the solicitor considers that it is essential to travel out to see the client in person then it will be necessary to communicate with the services police/lawyers with a view to minimising cost by ensuring that any interview can take place shortly after the solicitor arrives and include the possibility of utilising services transport. Factors relevant to the decision to attend include the nature, gravity and complexity of the alleged offence; whether the client is under a disability; whether the solicitor has prior relevant knowledge of the client etc. The solicitor must always bear in mind the cost to public funds – the greater the likely costs of travel, attendance etc., the greater the justification that will be required on assessment. The solicitor should consider, particularly if more than one client is involved, whether it would be more cost effective for a request to be made to the services authorities to transfer the suspects back to the United Kingdom.

~~(h) Solicitors attending clients outside the UK may incur considerable waiting time given that it may not be possible in intervals in the investigation to be able to undertake work for other clients, although the solicitor should always consider whether this is possible, particularly if waiting is lengthy. The LSC will expect solicitors to take all reasonable steps to minimise cost and would not normally expect to pay for more than 12 hours per day waiting and advising whilst a solicitor is abroad on a services case (see section 6.2 above).~~

~~(h)~~ There may be a considerable period of time between the end of the investigation in a services case and the decision to prosecute. Steps have been taken by the services legal aid authorities to make legal aid available more quickly after the investigative stage is concluded. The respective military authorities administer their own legal aid schemes for court martial proceedings once a services suspect has been charged. The LSC has no role in this. Freestanding Advice and Assistance may be used prior to legal aid being granted by the relevant services legal aid authority but it should only be used for providing advice relating to the investigation and not for preparation of the case. This type of assistance is subject to a financial test and eligibility must always be checked prior to advising services personnel.

~~(i)~~ The work undertaken in relation to the Investigations Class of Work will be paid for by the LSC and is covered by the Contract but the cost will be recovered from the Ministry of Defence. Claim codes 1D or 1F should be used to identify such claims on form CDS 6.



## 7. Payment for Police Station Work

### 7.1 Duty and Own Solicitor

1. Different rates of payment are made to duty solicitors depending on whether they are advising during social or unsocial hours. The same rate is always paid for own solicitor cases. The rates of payment are in **Appendix 3**.

### 7.2 Social and Unsocial Hours

1. There is no difference in payment rates for own client work irrespective of the time of day or night the advice is given. For duty solicitor matters, different rates apply in social and unsocial hours. Social hours are 09.30 to 17.30 Monday to Friday inclusive but excluding Bank holidays. Unsocial hours are 17.30 to 09.30 weekdays, all day Saturday and Sunday and Bank holidays (including Christmas Day and Good Friday) (GCC Part E paragraph 1.2).

### 7.3 Business Day

1. A business day is any day other than a Saturday, Sunday, Christmas Day, Good Friday or a Bank holiday (GCC Part E paragraph 1.2)

### 7.4 Duty Period

1. A duty period is any period of up to 24 hours during which a duty solicitor holds him or herself available to give Police Station Advice and Assistance in accordance with a duty solicitor scheme.

### 7.5 Standby Payment

1. If the LSC has decided that a rota should operate for any given period of time, an hourly rate for standby will be paid to the supplier. Standby payments are not available when a panel arrangement is in operation. The standby payment is made whether or not any Police Station Advice and Assistance is provided to clients during the rota period. Only one standby payment can be claimed even if the solicitor is on duty on more than one scheme. A standby claim should not exceed 24 hours except once per year when the clocks go back. All standby claims must be recorded on the CDS9 Police Station Standby Report form which is retained by the supplier. Claims on the CDS9 are then totalled up and claimed on the CDS6 Contract Work Report Form which is submitted monthly.

**Point of Principle DS8 (as amended)** states:

*“A standby payment is allowed for availability during a duty period. In this context, “available” means available to accept the initial call from the police station.” It does not mean that the solicitor must respond immediately.”*

## 7.6 Police Station Telephone Advice

1. Police Station Telephone Advice can only be provided in the circumstances shown at section 2.2. If the client does not meet **one of the** criteria e.g. the client is not at the police station and telephone calls are made prior to the client being at the police station, no claim can be made under the police station telephone advice scheme. Payment can be made as freestanding Advice and Assistance if the client is financially eligible and the appropriate forms completed. In order to take into account the developing practice of communication between the police and practitioners taking place via email, such communication can be treated as a single telephone call, where for example it is made to ascertain the effectiveness of any bail back to the police station. The Commission recognises that such a practice is often more efficient and cost effective particularly where telephone contact with the police can be very difficult or impossible to effect.
2. In March 2001, some suppliers had the option of electing to claim either a set rate for police station telephone advice calls (irrespective of the number of routine and advice calls made) or for each advice or routine call made. Following consultation a single system of remuneration for police station telephone advice calls was implemented with effect from 1 February 2004. All suppliers will be remunerated for telephone calls with a one-off fixed fee and higher hourly rates for other aspects of Police Station Advice and Assistance.
3. It should be noted that the definition of a Matter is wider than the definition of an investigation and therefore it is possible that more than one police station telephone advice fixed fee could be claimed for a single Matter where there is more than one investigation. The relevant definitions are given below and examples of when more than one fixed fee could be claimed are given later in this guidance.

*“An “investigation” is defined as all the work undertaken for one Client in respect of an arrest or arrests made at the same time.” (Contract Specification GCC Part E – notes below table 2.2)*

*“In the Criminal Investigations Class, all Advice and Assistance and Advocacy Assistance provided to one Client in respect of a Criminal Investigation constitutes a single Matter, whether or not that Investigation is extended to include other alleged offences.” (Contract Specification GCC Part B Rule 2.11)*

Guidance on when a police station telephone advice fixed fee should be claimed is contained in the notes following table 2.2 (GCC Part E)

4. Except in the case of CDS Direct Pilot Cases (in respect of which no Police Station Telephone Advice is claimable) One police station telephone advice fixed fee may be claimed per investigation provided at least one telephone call is undertaken during the investigation. The telephone call must be undertaken (either received or made) whilst the client is at the police station and can be either an advice or routine call. Where former CDS Direct Pilot cases are referred to a Duty Solicitor for Police Station attendance only, no telephone advice fixed fee may be claimed. However, in the case of each such referral a Fixed Acceptance Fee of £8.00 may be claimed.
5. Only one police station telephone advice fixed fee may be claimed *per investigation* irrespective of the number of telephone attendances on the client, police or other parties during the course of the investigation (see examples below).

6. If a client is bailed to return to the police station, that is a continuation of the same investigation and no further fixed fee may be claimed if further telephone or email work is undertaken.
7. If more than one client is advised during the course of a single investigation, one fixed fee may be claimed for each client who receives police station telephone advice. There must be at least one telephone call specific to the individual in order for the fixed fee to be claimed.
8. If the solicitor or representative accepts the matter whilst already at the police station, a police station telephone advice fixed fee may only be claimed if the matters continues beyond that attendance and police station telephone advice is provided at a later stage. In order for a police station telephone advice fixed fee to be claimed at least one telephone call, necessary to progress the case, must be made
9. No further fixed fee may be claimed if any further arrest of the same client takes place at any time at the police station or other place of detention whilst the investigation continues.
10. An arrest on warrant or for breach of bail is a separate investigation and attracts a separate police station telephone advice fixed fee, except where the arrest is made at a police station or other place of detention during an investigation for which a fixed fee payment is already claimable.

**Examples of a single investigation i.e. one fixed fee is claimable:**

- (a) *Client is arrested for handling a stolen credit card and is bailed from the Police Station. On the bail to return he or she is rearrested for a series of obtaining by deception offences.*
- (b) *Client is arrested for assault and burglary and taken to the Police Station. At the Police Station drugs are found and he or she is arrested for this new offence.*
- (c) *Client is arrested for theft and taken to the Police Station where he or she is further arrested on an old warrant for criminal damage.*

**Examples of more than one investigation i.e. more than one fixed fee is claimable:**

- (a) *Client is arrested for theft from a shop and is bailed to return to the Police Station. The next day he or she is arrested for another theft from a shop.*
- (b) *Client is arrested for burglary, he or she fails to appear at court and is arrested on the street for failing to appear.*

*Both of the above cases would attract two separate fixed fee claims as each amounts to two separate investigations.*

11. In the following cases, only police station telephone advice may be provided. No claim may be submitted for any police station attendances unless one of the exceptions in paragraph 12 below applies and the reason for attending is clearly documented on the file.

- (a) Client detained in relation to a non-imprisonable offence (see **Appendix 11** for examples of non-imprisonable offences);
  - (b) Client arrested on a bench warrant for failing to appear and being held for production before the court, except where the solicitor has 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 justified 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/drunk 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.
12. An attendance at a police station to advise on any of the above may be allowed if one of the following exceptions and the sufficient benefit test (GCC Part B Rule 2.5) are satisfied (see paragraph 7.7.3):
- (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 requires an interpreter or is otherwise 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 paragraph 11 (a) to (d) above;
  - (f) The solicitor or representative is already at the same police station, in which case he or she may attend the client but may not claim more than the police station telephone advice fixed fee.

The reasons for attending must be recorded on the file.

## **7.7 Attendance at the Police Station**

1. Subject to the limitations set out in the Contract, a supplier can be paid under Police Station Advice and Assistance for the time spent at a police station both with the client as well as with other individuals. Examples may include the suspect's family, the custody officer, the investigating officer, a review officer, other police officer or other person such as an appropriate adult, interpreter, pathologist, doctor or photographer where such an attendance has materially progressed the matter. Attendance should not be claimed during periods when the solicitor is waiting. This must be claimed as waiting time.

2. It is sometimes necessary to inspect documents to do with the case at the police station. This may involve many hours work e.g. a fraud investigation. It is unlikely that this can be covered under Police Station Advice and Assistance as the advice needs primarily to be given when the client is present in the police station. Freestanding Advice and Assistance would be available if the client qualified financially. The same would apply where documents are released by the police for inspection in the solicitor's office.
3. A supplier shall only attend the Police Station when the sufficient benefit test (GCC Part B Rule 2.5) is satisfied. The circumstances when this test will be satisfied include:
  - (a) to provide advice prior to and during interview;
  - (b) to advise at an identification procedure (including a video identification procedure when the client is not present);
  - (c) ~~when appropriate, to advise a client who is a youth or person at risk;~~
  - ~~(d)~~ when appropriate, to advise on the implications of the caution when the Client is charged with an ~~arrestable~~ offence ~~(see Appendix 11 for examples of arrestable offences);~~
  - ~~(e)~~(d) to advise when the advice may materially affect the outcome of the investigation and goes significantly beyond initial advice;
  - ~~(f)~~(e) to advise a client who complains of serious maltreatment by the police.

If none of the above is satisfied further justification for attending should be provided on the file.

4. Any attendance must be for the purposes of providing legal advice that could not be given over the telephone to the client and the file must show that the attendance was expected to materially progress the case beyond initial advice.
5. A claim should not be made for an attendance when the advice could have been provided reasonably by way of telephone advice. If it is considered that the advice should have been provided by telephone then the claim will be limited to the police station telephone fixed fee. Similarly if the solicitor or representative was already at the same police station, we may cap the claim to no more than the value of the police station telephone advice fixed fee.
6. An attendance at the police station for an ineffective bail to return may be disallowed unless at least one ~~telephone call check~~ was made prior to attendance to establish whether or not it would be effective. Such a check can be by any means including telephone call or e-mail or, if the lawyer speaks to the officer in person for example and whilst on another case. This provision is designed to ensure that the Commission does not make unnecessary payments in instances where it is known in advance by the defence lawyer that a bail to return attendance is to be ineffective. This may be claimed as free standing Advice and Assistance if the client is financially eligible.

7. If the police indicate that an interview or identification procedure will take place at a specified time the solicitor or representative should only 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, e.g. taking instructions from the client, obtaining disclosure of evidence, attending the officer in the case.
8. When attending the police station solicitors and representatives should ensure that travel, waiting and attendance times are minimised.

## **7.8 Rota Duty Payment**

1. The Contract (GCC Part B paragraph 8.2.6) requires a rota duty solicitor to provide the following services as duty solicitor and it therefore follows that the rota solicitor is entitled to claim the relevant duty solicitor rate of payment:
  - (a) Initial advice.
  - (b) Attendance at the police station to provide advice at all police interviews during the duty period where the client has been arrested for an ~~arrestable offence under Section 24 of PACE.~~
  - (c) Attendance at an identity parade or other identification procedure.
  - (d) Attendance where the client complains of serious maltreatment by the police.
  - (e) Advice when the client is charged with an ~~arrestable~~ offence.
  - (f) Representation on a warrant of further detention.

If (b) or (c) take place after the end of the rota period the duty solicitor can:

- i) Continue to act on a duty solicitor basis i.e. the duty solicitor or an accredited representative continues to advise in which case the duty solicitor rate can be claimed up until the point when the client is released from the initial continuous period of custody, or
- ii) Continue with the case but on an own solicitor basis. This would, for example, permit the solicitor to deploy a probationary representative on the case. From this point onwards the own solicitor rate should be claimed.

## **7.9 Panel Payment**

1. The Contract requires a panel duty solicitor to provide the same service as above.

Thereafter the panel duty solicitor has the choice of:

- (a) Continuing to act on a duty solicitor basis i.e. the duty solicitor or an accredited representative continues to advise in which case the duty solicitor rate can be claimed up until the point when the client is released from the initial continuous period of custody, or
- (b) Continuing with the case but on an own solicitor basis thus allowing the deployment of a probationary representative. From this point the own solicitor rate should be claimed.

## **7.10 Warrants of Further Detention**

1. The police generally have power to detain a suspect for up to 36 hours without charge. Where, however, a person is arrested under the Terrorism Act 2000 the initial period of detention can be up to 48 hours and extended to a maximum of 7 days. To detain that person longer the police require authority from the magistrates' court. This is done by way of an application for a warrant of further detention under Section 43(1) of PACE. It will be granted if the magistrates are satisfied that there are reasonable grounds for believing the further detention is justified.
2. Where such an application is made the suspect is entitled to representation at the hearing by way of Advocacy Assistance which is self granted by the supplier without a written application (GCC Part B Rule 4.6). As it relates to the period of detention at the police station and should be applied for within the initial period of detention, the representation will be conducted by the police station adviser. Counsel may not be used (GCC Part B Rule 4.8). Similar provisions apply to military suspects under the Armed Forces Discipline Act 2000. Advice may be given to services personnel at a custody hearing abroad by video conference link.
3. Where a duty solicitor represents a client on an application for a warrant of further detention or at a services custody hearing, different rates apply during social and unsocial hours (GCC Part E Section 2.3).

## **7.11 Disbursements - Interpreters**

1. Where an interpreter is required at the police station, the police will appoint an interpreter whose role is restricted to interpreting for the purposes of the prosecution case. The interpreter used may be called as a prosecution witness.
2. When a defence solicitor requires an interpreter to facilitate the provision of advice between a solicitor and a client, a different interpreter should be used, where practicable. This is to prevent contamination of evidence gained in private consultation with the client, which could render the police interview inadmissible at court. The interpreter used by police may be called as a prosecution witness. Where this is not practicable the client may, through his or her defence solicitor, consent to the use of a police appointed interpreter. The requirements of the Specialist Quality Mark for the use of an expert must be considered. The interpreter employed by the defence may be selected from a list held by the police

and the costs will be payable as a disbursement under Police Station Advice and Assistance provided the expense is reasonably incurred and reasonable in amount.

**Point of Principle DS2** provides that:

*“Where a solicitor employs an interpreter to assist in his or her advising a client at the police station it will be for the solicitor to justify the interpreter’s fees taking into account all the circumstances of the case, including the need to preserve confidentiality of advice given to a suspect and information received from a suspect and/or the particular characteristics of the language spoken and the need for accurate interpretation.”*

3. If the solicitor or a member of the supplier’s staff provides interpreting services directly, this cannot be charged as a disbursement unless there are separate contractual and payment provisions between the supplier and the person(s) providing the service. The business providing this service must be a separate entity and must have appropriate expertise. If undertaken “in house” this work must be claimed as part of profit costs (see Section 4.5 of Criminal Bills Assessment Manual).
4. The Institute of Linguists maintains the National Register of Public Service Interpreters (NRPSI). In order to be entered on the Register, interpreters must undergo training and demonstrate competence. They should, therefore be “fully qualified” within the meaning of the Royal Commission’s recommendation, that is not to say that there are not competent interpreters who are not on the National Register. Criminal justice agencies have agreed to secure all their interpreters, wherever possible, from an approved national register from 1 January 2002. Police, courts, and other legal agencies will aim to use the NRPSI or the Council for the Advancement and Communications with Deaf People (CACDP) Directory for criminal cases in England and Wales. If it is not possible to select an interpreter from the NRPSI or the CACDP Directory, the interpreter may be chosen from some other recognised list. However, it will be essential that an interpreter selected from another list should meet the standards at least equal to those required for entry on the NRPSI or CACDP Directory in terms of academic qualifications or proven experience of interpreting within the criminal justice system and professional accountability. Suppliers of criminal defence services should aim to meet the same standard and if it is not possible to do so, a note must be made on file explaining the reasons why.
5. The fees charged by interpreters vary. They depend on market forces and, in general, the fees charged for interpreting in more obscure languages are higher than in more common languages. Interpreting/translation agencies also tend to be more expensive and should be avoided where possible. In a publicly funded case, just as in a privately funded case, a solicitor should aim to secure value for money when instructing any third party. This sometimes may involve obtaining competitive quotes where it is possible to do so. The fees charged by a competent interpreter should not be any higher merely because they are on the National Register. However, registered interpreters are expected to maintain a good knowledge of public service procedures, relevant legislation and specialist terminology. This should mean provision of a higher quality service and therefore it may be reasonable to instruct a registered interpreter at a slightly higher hourly rate. Guidance on hourly rates is published in Appendix 5 of the Criminal Bills Assessment Manual.

6. The police are increasingly using interpreters that belong to the National Register of Public Service Interpreters (NRPSI) which is maintained by the Institute of Linguists and suppliers are encouraged to use such interpreters (see Appendix 2 of Criminal Bills Assessment Manual). Current ACPO guidance is reproduced at **Appendix 8** of this manual.

## **7.12 Disbursements – Other**

1. The Contract Rule on disbursements is set out in **Appendix 4**. Disbursements will be payable where they have been actually and reasonably incurred. The following examples will assist:
  - (a) Where injuries have been sustained and, particularly if an allegation is made against the police, photographs may need to be taken as a matter of urgency.
  - (b) If the detainee has particular learning difficulties or is in a state of mental ill health, the supplier may require independent examination by a separate medical or psychiatric expert.
  - (c) There are rare but urgent cases where it may be reasonable and necessary to instruct a pathologist to examine the victim's body in order to challenge the police pathologist's conclusions.

## **7.13 Travel and Waiting**

1. The duty solicitor should make arrangements to be reasonably accessible to a police station when on rota duty.
2. Reasonable travel time is remunerated. Where work is undertaken out of hours, travel time and expenses may be claimed to and from the solicitor's home address or other location provided that he or she has actually travelled to and from that location and the journey time is reasonable. For own solicitor matters at a distant police station, the guidance on distant solicitors in the Contract should be considered (GCC Part B Rule 7.9).
3. There is a presumption that the most economical means of transport will be used taking into account the combined costs to the fund of the disbursement and the time taken at the profit cost travel rate. Both elements need to be borne in mind e.g. whilst travelling by coach may be cheaper than the train in terms of the fare, the total cost to the fund of the former might be greater in the particular circumstances if one adds in the extra time the journey will take at the hourly travelling rate. Where a less economical method of transport has been used, then the costs may be reduced to the level that would have been incurred had the more economical method been adopted. For out of hours Police Station Advice and Assistance, the Commission accepts that private transport is often the only means by which a solicitor can attend the police station at night. In other cases, any additional time needed for public transport is an important factor to consider. Private transport may be more economical bearing in mind the additional time taken if public transport is used. If the journey could have been made by public transport, but a private car was used instead and that is less economical, the assessor should allow the notional travelling time and costs that public transport would have taken. Where a less economical method of transport has been used, then the costs will be reduced to the level that would have been incurred had the

more economical method been adopted, or the time actually spent, whichever is the less.

4. Assessors should note that on occasions a fee earner may have to travel with bulky case papers and reference books. There is also a security and confidentiality issue in that solicitors must keep safe from interference or theft the client related material that they carry. In such circumstances it may not be reasonable to expect a solicitor to use public transport. The onus is on the solicitor to provide relevant justification on file. The cost of travel by taxi may be allowed if there was no reasonable alternative. The onus is on the solicitor to justify on file why a taxi was used instead of a cheaper alternative. First class travel expenses may not be claimed.
5. The cost of travel by air may only be allowed if there is no reasonable alternative and the class of fare is reasonable in all the circumstances, or if air travel is more economical taking into account the time saved. This applies equally to travel on internal and international flights. If the assessor determines that it was unreasonable to use air travel, the appropriate rate for travel by an alternative means of public transport should be allowed. Cheap air fare offers should be used where possible, however, the more money spent on an air ticket, the greater degree of flexibility is purchased in terms of late booking facilities, flight availability and refund on cancellation. The assessor should allow what is reasonable in the circumstances, bearing in mind that the most economical fare might not always be appropriate. It would be usual to expect alternative quotes to be sought to identify the most competitive route.
6. Invoices/receipts should always be available for travel expenses except where the value of the claim is up to £10 in which case a receipt is not required, but a dated breakdown of the cost must be provided on file. If the value of a travel expenses claim exceeds £10 (excluding mileage) it must be substantiated by the relevant voucher or an explanation why it is not available.
7. If a solicitor agent or freelance representative is instructed by the supplier then the travelling time and expenses incurred should not generally exceed those that would have been incurred by the supplier had a member of staff undertaken the case, unless the regional Criminal Defence Service Manager has issued a direction permitting this rule to be waived in rural areas. Where the assessor considers that instruction of a third party representative has resulted in increased travel time and costs, the assessor may undertake a notional assessment of the costs on the basis that the supplier undertook the work in person.
8. Similarly, if a duty solicitor within the firm but based at another office accepts a duty matter, the travelling time and expenses incurred should not generally exceed those that would have been incurred if the original duty solicitor had accepted the matter. Where the assessor considers that acceptance by a duty solicitor based at another office has resulted in increased travel time and costs, the assessor may undertake a notional assessment of the costs on the basis that the original duty solicitor undertook the work in person.

9. From 19 August 2002 the Contract was amended to cap the total amount of travel time claimable when work is delegated to a third party who is not an employee. Part B Rule 3.3 (own solicitor) and Part B paragraph 8.2.11 (duty solicitor) provides that if work is delegated to a representative or solicitor agent who is not an employee of the firm the travel time claimed shall not exceed 45 minutes each way. This is an absolute maximum that may not be exceeded, unless a local direction has been given.
10. The combination of the requirements in paragraphs 6 to 9 above mean that the travel time and related disbursements allowed where a non-employed third party representative or solicitor is instructed must be no more than if the supplier had undertaken the work and in any event may not exceed a maximum of 45 minutes each way unless the regional Criminal Defence Service Manager has issued a direction under paragraph 7.

#### **7.14 Hotels**

1. Hotel expenses actually and reasonably incurred by a duty solicitor on rota (but not panel) can be claimed. Such expenses may be justified if the solicitor lives at a distance from the police station and has to rely on public transport and that there are likely to be sufficient cases to justify the cost of the hotel. The expenses can include meals but not alcohol or other incidental expenses, such as newspapers.
2. The Department for Constitutional Affairs “Guide to Allowances” (see Appendix 5 of the Criminal Bills Assessment Manual) currently suggests an overnight allowance rate of £85.25 plus VAT for expert witnesses staying in inner London and £55.25 plus VAT elsewhere.



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

### **8.1 Generally**

1. Whilst attendances at the police station may vary enormously they will generally conclude either by charges being made, the client being bailed pending further enquiries or released without charge.

### **8.2 Pending Further Enquiries**

1. Usually, if further enquiries are pending, little is left for the solicitor to do in the interim. If requested, he or she can attend on the client when he or she returns to the station and advise at that time. This further attendance can be variable in nature too. The police may choose to interview the client again at this time, undertake an identity parade, or searches or simply go through the charge/bail process.
2. If a client is bailed to return, there may be good reason for the client to attend the solicitor's office before the return visit to the police station e.g. to discuss defence lines of enquiry, potential witnesses and potential representations which could be made on return. Such work cannot be remunerated as Police Station Advice and Assistance. An application for freestanding Advice and Assistance must be made to cover this work, providing that the qualifying criteria are met.

### **8.3 Following Charge**

1. If a client has been charged, he or she will be given written notice of the date/time of his or her court attendance. The crime transaction criteria require solicitors to confirm the outcome of the attendance and it is good practice to confirm it in writing if public funding is available including details of the allegations, the advice given, the outcome and the reasons for any further enquiries. The solicitor should explain the outcome to the client verbally and make a note on the file that he or she has done so. If it is reasonable to do so, given the nature of the client and/or his or her circumstances and if public funding is available, the solicitor could also confirm the date/time of the court appearance in writing. Where the supplier is to provide further advice i.e. it is not a "one off" attendance, then the Specialist Quality Mark requires the supplier to send a client care letter. This may be remunerated under freestanding Advice and Assistance provided the client meets the eligibility criteria and such Advice and Assistance is provided within the Criminal Investigations Class. An application for Advice and Assistance may be signed whilst still at the police station for this purpose.

2. The Criminal Investigations Class of Work covers post charge Police Station Advice and Assistance which is necessary to complete the attendance at the Police Station immediately following charge. It is reasonable to remain at the Police Station if representations need to be made about bail provided the justification for doing so is noted on the file. The solicitor should deal with all outstanding issues on which legal advice is required, but it will not be reasonable to remain at the police station while such steps are carried out e.g. taking fingerprints, photographs, swabs or while mandatory drug testing is carried out. It may be necessary to remain if the client requires further assistance due to his or her particular circumstances, such as youth or vulnerability, in which case the relevant factors must be noted on the file (GCC Part E Notes for Guidance below table 2.2).
3. The Criminal Justice and Courts Act 2000 enables suspects to be detained post charge for the purposes of mandatory drug testing. The Criminal Justice Act 2003 extends this power to 14-17 year olds. Mandatory drug testing has already been piloted in some parts of the country. Any advice to a suspect on provision of a sample, and any resulting charge as a result of a refusal to provide the sample, will be treated as part of the same matter as the original police station attendance and will therefore form part of the same claim using the same UFN as the work relating to the substantive investigation. No separate police station telephone advice fixed fee may be claimed in relation to mandatory drug testing, or any subsequent offence arising from the testing. Where the client is charged with failing to provide a sample and court proceedings ensue, this is treated as a separate offence. However, it is likely to be considered part of a 'series of offences' with the substantive matter charged, and therefore part of the same case for the purpose of claiming and calculating any standard fee.

## **8.4 Representation Orders**

1. The General Criminal Contract provides that the Criminal Investigations class of work covers all work properly undertaken for a client during an investigation i.e. up to the point when the client is charged or summoned or the investigation is otherwise concluded. This class also extends to cover post-charge police station Advice and Assistance which is immediately necessary to complete the attendance at the police station following charge and certain post-charge Police Station Advice and Assistance where a client is being represented in the Criminal Proceedings Class of Work in the same matter or case e.g. attendance at an identification parade (GCC Part A Section 2.2).
2. The Criminal Proceedings class of work covers all work undertaken for a client in criminal proceedings from the date of charge or summons.
3. From time to time, solicitors may undertake post-charge work in respect of a client detained at the police station. The types of scenario when this might arise are as follows:
  - (a) breach of bail conditions (including Crown Court proceedings);
  - (b) post-charge interview or identification parade;
  - (c) arrest on a warrant following failure to appear at the magistrates' court;

- (d) return to police station for reprimand or warning or caution following representations to the CPS.
- (e) re-charge following discharge by the court e.g. due to lack of service of CPS papers.

Such work is claimed in different ways according to whether it was undertaken before or after the date of the relevant amendment to the Contract i.e. 19 August 2002. For work undertaken prior to 19 August 2002 the guidance in Issue 5 (June 2003) of this manual is applicable.

## **Post-Charge Work undertaken on or after 19 August 2002**

### **Arrest for breach of bail conditions or on a warrant following failure to appear at the magistrates' court**

4. Where a client is:
- being represented in respect of a matter or case; and
  - the matter or case is in the proceedings class of work; and
  - the client is arrested for breach of bail conditions or on a warrant following failure to appear at the magistrates' court arising from the same matter or case.

The solicitor may provide Police Station Advice and Assistance in respect of the arrest whilst the client is at the police station. This work should be claimed in the investigations class of work at the relevant police station rates of remuneration. It must not be allocated a new UFN but must be allocated the same UFN as the substantive matter or case. The Commission introduced two new claim codes to distinguish these two types of work. 1H is the code for breach of bail conditions and 1I applies to arrests for failing to appear.

5. A police station telephone advice fixed fee may be claimed as a part of this claim if the relevant requirements for making such a claim are met, even if such a payment has already been claimed on an earlier investigations class claim in the same matter or case.
6. Any work done for the client outside of the police station, whether related to the substantive matter or case or the further arrest, must be undertaken and claimed within the proceedings class in accordance with existing contract rules, i.e. a single claim covering both the substantive matter and the breach/arrest.

### **Post-charge interview, identification parades or re-charge following dismissal**

7. Where a client is:
- being represented in respect of a matter or case; and
  - the matter or case is in the proceedings class of work; and
  - a post-charge interview or identification parade is arranged; or
  - the client is recharged following discontinuance or dismissal of the case.

The supplier may provide Police Station Advice and Assistance whilst the client is at the police station. This work should be claimed in the investigations class of work at the relevant police station rates of remuneration. It must not be allocated a new UFN but must be allocated the same UFN as the substantive matter or case. Claim code 1J must be used.

8. Only actual travelling, waiting and attendance at the police station may be claimed under such a claim at the relevant rates in the investigations class. Any office based work associated with the identification parade or recharge must be claimed as part of the substantive claim that will be made in the proceedings class of work. No telephone calls (whether routine or advice) may be claimed in such an investigations class claim. However, routine calls involved in arranging the identification parade or recharge may be included in the proceedings class claim where appropriate in accordance with the terms of the contract.

### **Administration of a Reprimand, Warning or Caution**

9. Where a client has been charged, but following defence representations to the CPS, a decision is made to administer a reprimand, warning or caution the supplier may attend the police station for this purpose. This work should be claimed in the investigations class at the relevant police station rates. It must not be allocated a new UFN and the rules set out in paragraphs 7 and 8 above apply in terms of the items that may be claimed. Claim code 1K must be used.

### **8.5 Financial Eligibility and Limits**

1. There are no financial eligibility requirements for Police Station Advice and Assistance or for a representation order but there is for freestanding Advice and Assistance.
2. There are no financial upper limits that apply to Police Station Advice and Assistance. Freestanding Advice and Assistance is available in the Criminal Investigations Class only and is subject to a £300 upper limit which may be extended on application to the LSC.

## 9. Assessment

### 9.1 Generally

1. A claim for payment for police station work is made via the contractual payment arrangements prior to any assessment taking place. Assessment will therefore only be undertaken after payment has been made.
2. The general basis for assessment is:
  - (a) was the work actually and reasonably done?
  - (b) was the time in respect of each item reasonable? (GCC Part C Rule 1.13)

The basis of assessment is set out in the Contract (**Appendix 5**).

### 9.2 Sufficient Benefit Test

1. Advice given must satisfy the Sufficient Benefit Test (GCC Part B Rule 2.5). This test will be automatically satisfied for initial advice when a client is entitled to Police Station Advice and Assistance under PACE. The test must however be reapplied in deciding whether attendance at the police station is justified and the length of that attendance after the initial advice has been given e.g. arrest on a warrant not backed for bail, minor road traffic cases etc.
2. If a client is bailed to return to the police station then the test will generally be satisfied unless the solicitor had good reason to believe that nothing effective would take place on that day e.g. police intended to immediately re-bail the client. It will not be reasonable to attend unless the police have first been contacted to confirm that the bail to return will be effective.

### 9.3 Submission of Claim

1. A claim must be submitted within 3 months (GCC Part C Rule 1.2) of the matter or case ending. The relevant date is the “Date class of work concluded” on each CDS6. Account must be taken of the effect of the monthly deadline for the submission of the supplier’s CDS6 claims. If a late claims penalty is being considered, the guidance in section 10.4 of the Criminal Bills Assessment Manual must be applied. All work in the Criminal Investigations Class of Work (GCC Part A Section 2) must be submitted as a single claim.

#### **Example**

*A supplier attends a client at the police station; the supplier provides freestanding Advice and Assistance (the client is financially eligible) at the supplier’s office; the client is bailed back while further investigations on the same matter take place; the supplier attends the client at the police station for a second interview and the client is then charged – one claim under the Criminal Investigations Class of Work should be submitted.*

2. For Police Station Advice and Assistance or freestanding Advice and Assistance in the Criminal Investigations Class of Work the claim may be submitted when:
  - (a) The investigation has been concluded.

- (b) It is known that no further work will be undertaken.
- (c) It is unclear whether further work will be undertaken and one month has elapsed since the date of the last work undertaken.
- (d) Post-charge work has been undertaken that is within the scope of Part A paragraph 2.2.1.

(GCC Part A Section 2.4)

## 9.4 How We Assess

1. The Contract states that we will apply our published guidance, “*except where expressly overridden by the Contract*”, which currently includes the Police Station and Court Duty Solicitor Costs Assessment Manual and the Criminal Bills Assessment Manual. Suppliers are required to be familiar with the contents of these manuals and any other guidance on criminal costs assessment produced by us (GCC Part C Rule 1.13.4).

## 9.5 Assessment Checks

1. The supplier’s file will be considered as part of the assessment process. The file should contain the information listed in **Appendix 6** which should include attendance notes together with a completed CDS11 form. Whether it was reasonable to do the work must be considered by reference to the point of view of the reasonable solicitor and the state of knowledge at the time the work was done rather than approached with the benefit of hindsight.
2. The following checks should be carried out on files selected for assessment:
  - (a) Was the advice within scope? The client will normally have been arrested by the police or Customs and Excise (see section 3.1). However, the client may be a volunteer or even a witness or other person assisting with enquiries (see section 3.2).
  - (b) Was advice given by an appropriate person? (see the table in section 4.15). If payment is claimed at the duty solicitor rate the advice should have been provided by a duty solicitor or, after the initial advice, an accredited representative. If payment is claimed at the own solicitor rate then the advice could have been given by a solicitor ~~who is not a duty solicitor~~ complying with section 4.8 of this manual or an accredited or probationary representative (except that a probationary representative may not attend on an indictable only offence).
  - (c) Was the Sufficient Benefit Test satisfied? (see section 9.2). The file should be endorsed to confirm that the Sufficient Benefit Test is satisfied when any advice beyond initial advice is given. If there is no endorsement on the file the assessor must look for other evidence on the file to determine the test was satisfied. If no such evidence is available, then the assessor should consider whether to nil or partially assess the claim.
  - (d) Was the solicitor distant from the client? If the solicitor is distant from the client there should be compliance with the GCC Part B Rule 7.9 which is set out in **Appendix 7**.

- (e) Was the work actually and reasonably done? In practice caseworkers looking at any particular file or piece of work will need to keep all of the following issues in mind but should not apply the benefit of hindsight:
- i) Is the work entered on form CDS11 backed up by an attendance note on the file which has an indication of duration? There should be a record of the work done on the file. This will be attendance notes of work done/attendances on the clients and others and telephone attendances. These documents need to be viewed in two ways. The first is that they are the basic information upon which the claim can be arithmetically assessed. The second is that the time spent should be recorded on these documents or on a separate time sheet or form CDS11 in addition to the notes of the content of such attendances. The total time so recorded is calculated by reference to the hourly rate. In the absence of suitable evidence the assessor must decide whether the work done should be allowed, reduced or disallowed. Telephone calls do not have to be entered on form CDS11 when the fixed rate police station telephone advice payment is claimed.
  - ii) Does the attendance note contain sufficient information to justify the time claimed and/or is there other supporting evidence of the work done? The time can either be reduced to such time as is considered justified or allowed as claimed. Where the attendance note does not justify the work done it should be disallowed.
  - iii) Was it reasonable to perform the work at all and if so is the time claimed reasonable? The Contract states that determining reasonableness involves taking into account all the relevant circumstances of the case including the nature, importance, complexity or difficulty of the work and the time involved and allowing a reasonable amount of time for work actually and reasonably done in accordance with the terms of the Contract. "Reasonable" means what is reasonable for the proper conduct of the case (GCC Part C Rule 1.13.1).
  - iv) Has the work actually and reasonably been done? The onus is on the solicitor to demonstrate this. In particular where the solicitor or representative has remained at the police station post charge there must be appropriate justification for doing so recorded on the file.

**Point of Principle DS4** states:

*"A legal representative who attends by prior appointment at a police station for the purpose of giving advice and assistance is entitled to be paid for work actually and reasonably done even though the purpose of the attendance is thwarted, for example, because the client does not attend or the appointment has been cancelled without notice."*

This Point of Principle is subject to guidance in the Contract Specification (GCC Part B 8.2.19) and 7.7.6 of this manual.

- v) Would a reasonably competent solicitor have undertaken the work, and if so, would he or she have spent that amount of time on it?

- vi) Have the requirements of the Contract and Duty Solicitor Arrangements 2001 been met? If not, the claim may be reduced or disallowed on assessment. There would not be compliance if the requirements of the Duty Solicitor Arrangements 2001 or the Contract were not followed e.g. a probationary representative advised where a duty solicitor or accredited representative should have done so. Consideration should also be given to referring such instances to the Regional CDS Manager or supplier's Account Manager as it may be appropriate to take disciplinary action under the Duty Solicitor Arrangements 2001.
- vii) Was the appropriate payment claimed? The relevant remuneration rates in Part E of the Contract should be applied to the time allowed and the resulting sum or standard fee will be added to any disbursements allowed and to any VAT to produce a figure for the costs of the case (GCC Part C Rule 1.13.2).
- viii) In assessing whether claims are reasonable we may take into account the average costs for travel, waiting and attendance incurred by other CDS Suppliers in the same region. In addition, average costs for travel, waiting and attendances may be monitored on a quarterly or more regular basis through management reports generated by the LSC. Where such reports identify that the amount of time claimed by a particular supplier exceeds the average profile for that particular region, the issue will be raised directly with the supplier through the Account Manager. Following discussion with the supplier, the Account Manager may conclude that the reasons underlying the amounts claimed are beyond the control of the supplier in which case no further action will be taken although the position will continue to be monitored. If the Account Manager forms the view that the amounts claimed are unreasonable and that the supplier has failed to justify the amount claimed, then he or she may then consider making an appropriate percentage reduction to those claims affected. Any such reduction would be subject to the usual appeal right (see section 11.2 of the Criminal Bills Assessment Manual).
- ix) Where Duty Solicitor rates have been claimed a check should be made that the attendance claimed was prior to the detainees' release from an initial period of custody (or for volunteers the initial period of attendance at the police station).
- x) Where a solicitor or representative has attended the police station a check should be made that an attendance was justified and the case was not one that should be limited to telephone advice only.

## 10. Court Duty Solicitor

### 10.1 Generally

1. The purpose of this section is to provide guidance to assist suppliers in formulating claims and for staff conducting audits of court duty solicitor work. This section should be read in conjunction with the Criminal Bills Assessment Manual. The definitions used are the same as those contained in the General Criminal Contract. Suppliers are required by the Contract to have regard to the principles contained in this manual, the Criminal Bills Assessment Manual and the guidance on the assessment of costs of Controlled Work when claiming for work under the Contract (GCC Part C Rule 1.13 note 4). This guidance will be applied by the Commission when assessing claims.
2. The guidance in this section applies to all court duty solicitor work undertaken on or after 17 May 2004.

### 10.2 Regulations

1. Advice and Assistance (including Advocacy Assistance) provided by a court duty solicitor acting as such is provided under Regulation 4 of the Criminal Defence Service (General) (No. 2) Regulations 2001. This should be read alongside Section 13 of the Access to Justice Act 1999.
2. Court duty solicitor work must be undertaken by a court duty solicitor acting as such. The CDS can only pay for this work if that CDS supplier holds a Contract.

### 10.3 Scope

1. The scope of court duty solicitor work is defined in the Criminal Proceedings Class of Work (GCC Part A Section 3.2) as:
  - (a) **Advice and Assistance** to a Client who is eligible for help from the court Duty Solicitor acting as such under Part B, Section 8.3;
  - (b) **Advocacy Assistance in the magistrates' court** in the following circumstances:
    - (i) To an individual at risk of imprisonment in civil proceedings for failure to pay a fine or other sum ordered or to obey an order of a magistrates' court;
    - (ii) To a respondent in proceedings under Section 1, 1D, 2 or 2A of the Crime and Disorder Act 1998 relating to an anti-social behaviour order or sex offender order (including an application to vary or discharge such an order);
    - (iii) To a respondent in proceedings under Section 8(1)(b) of the Crime and Disorder Act 1998 relating to a parenting order made where an anti-social behaviour order or a sex offender order is made in respect of a child or young person (including an application to vary or discharge such an order);
    - (iv) To a respondent in proceedings under Section 8(1)(c) of the Crime and Disorder Act 1998 relating to a parenting order made on the conviction of a child or young person (including an application to vary or discharge such an order);

- (v) To a respondent in proceedings under Section 14B (banning orders made on complaint), an application in proceedings under Section 14G (variation of a banning order) or Section 14H (termination of a banning order) of the Football Spectators Act 1989;
  - (vi) Subject to Part B, paragraph 8.3.1 (b) at any bail application where the defendant is held in custody;
  - (vii) To a defendant not in custody provided it is in connection with an imprisonable offence (see **Appendix 11** for examples of imprisonable offences);
  - (viii) To a parent or guardian at risk of being bound over under Section 150 of the Powers of Criminal Courts (Sentencing) Act 2000 or in breach of such an order;
  - (ix) To a recipient of a notice under Section 21B(2) of the Football Spectators Act 1989;
  - (x) To an individual at risk of imprisonment in Criminal Proceedings for failure to pay a fine or other sum ordered or to obey an order of a magistrates' court;
  - (xi) To a respondent in proceedings under Sections 2 and 5 of the Anti-Social Behaviour Act 2003 relating to the making or extension of a closure order.
  - (xii) Advice and Assistance and, where appropriate, Advocacy Assistance to an individual applying to vary bail conditions imposed by police under Section 47 (1E) of the Police and Criminal Evidence Act 1984, as amended by the Criminal Justice Act 2003.
3. Service requirements for court duty solicitor cases are detailed within the Contract (GCC Part B Section 8.3) and are reproduced at **Appendix 10** of this manual.

## 10.4 Qualifying Criteria

1. The following qualifying criteria are applicable to court duty solicitor work:
  - a) **Advice and Assistance** – the sufficient benefit test (GCC Part B Rule 2.5) must be met to provide Advice and Assistance.
  - b) **Advocacy Assistance** – there are no qualifying criteria for Advocacy Assistance provided by a court duty solicitor acting as such provided the matter falls within the scope of service of the court duty solicitor scheme.
2. There are no financial criteria for Advice and Assistance or Advocacy Assistance provided by the court duty solicitor acting as such.
3. There are no financial limits applying to court duty solicitor work.

## 10.5 Limitations

1. A court duty solicitor is not permitted to act in the following circumstances:
  - making a bail application for a client who has received such assistance from that or another duty solicitor on a previous occasion;
  - providing Advocacy Assistance in committal proceedings or at a not guilty trial;

- providing Advice and Assistance and Advocacy Assistance to a client in connection with a non-imprisonable offence unless they are in custody (see **Appendix 11** for examples of non-imprisonable offences).
- providing Advice and Assistance or Advocacy Assistance, at an adjourned hearing, to a defendant to whom he or she or any other duty solicitor has provided services in the same case (except in connection with a failure to pay a fine or other sum ordered or to obey an order of the court);

(GCC Part B Section 8.3)

2. Where a client wishes another solicitor to act, the court duty solicitor may assist providing the named solicitor is not available and the client asks the court duty solicitor to act on that occasion only.
3. A court duty solicitor shall not act for a client who has his or her own solicitor unless the court session takes place on a non-business day and the court is unable to secure the own solicitor's attendance (or is unable to determine whether the client has his or her own solicitor). If the court duty solicitor represents a client in these circumstances he or she shall take all reasonable steps to notify the client's own solicitor as soon as possible after the hearing.
4. A court duty solicitor may also act as agent for the client's own solicitor (unless prevented by local rules), but this may not be claimed as duty solicitor work.
- ~~3. If a defendant has been granted a representation order the court duty solicitor must not act unless instructed to act as agent for the CDS Supplier named on the representation order. The Court Duty Solicitor should obtain confirmation from court staff as to whether or not the defendant has been granted a Representation Order prior to agreeing to act as Court Duty Solicitor. If a Representation Order exists but does not cover the current offence the Court Duty Solicitor may not act (unless as agent) if the new offence would be considered to be ancillary to the specified proceedings.~~
- ~~4. For Court sessions that take place on a Saturday or Bank Holiday it may not be possible for the Court Duty Solicitor to establish whether a Representation Order has been granted. Where it is not possible to establish, having taken reasonable steps, whether a Representation Order has been granted the Court Duty Solicitor may act for the defendant on that occasion only. In these circumstances reasonable steps would normally include asking the defendant, attempting to contact a representative of the instructed solicitors and, where possible, checking with court staff.~~

## 10.6 Recording

1. Before accepting instructions to act, a court duty solicitor must check that the matter falls within the scope of service of the court duty solicitor scheme. A written record must be made either before, or as soon as practicable after, any assistance is provided. The following information must be recorded for each client assisted:
  - the client's name;
  - the client's address;
  - the date, time and venue of the court appearance;

- confirmation that the matter falls within scope of court duty solicitor work;
- whether the client is in custody or charged with an imprisonable offence;

## 10.7 Claiming

1. A court duty solicitor will be remunerated for providing Advice and Assistance or Advocacy Assistance to defendants in the magistrates' court providing that the matter is within the scope of service requirements for court duty solicitors (GCC Part B Section 8.3 – reproduced at **Appendix 10**).
2. A claim may also be made for waiting at court providing a defendant may require Advice and Assistance or Advocacy Assistance. Any claim for waiting will be included in the single claim made for the court duty solicitor session.
3. Enhanced rates are payable for work done on a day that is not a business day.
4. A claim for travelling to court may only be made in one of the following circumstances:
  - (a) The court session takes place on a day that is not a business day.
  - (b) The court session takes place on a day when a call-in scheme is in operation.
  - (c) The court session takes place on a day when an attendance scheme is in operation and the duty solicitor is requested to return to court to provide Advice and Assistance or Advocacy Assistance to a defendant after being released by the court.
5. For the purposes of paragraphs 3 and 4(a) above, a business day is defined as any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a bank holiday under the Banking and Financial Dealings Act 1971.
6. The following rates are applicable for court duty solicitor work:

	<b>National</b>	<b>London</b>
Standard Rate (attendance and waiting at a magistrates' court)	53.85	55.15
Enhanced Rate (only payable in respect of work done on a day which is not a business day)	67.30	68.90
Travelling (only payable where the Duty Solicitor is called out (including being called to return) to the court from the office or attends on a day that is not a business day. Reasonable travel expenses may also be claimed (where relevant)).	26.30	26.30

7. A single claim must be submitted for each court duty solicitor session covering all work undertaken by the court duty solicitor acting as such. Any time spent acting as agent for another CDS Supplier or on own client matters must be excluded. It should be noted that a Local Scheme may prevent court duty solicitors from undertaking own client work or work as an agent while acting as court duty solicitor.
8. Where a court duty solicitor acting as such provides Advice and Assistance or Advocacy Assistance for a matter that concludes on the same day as the court duty solicitor session, the time spent on the matter must be included in the single claim for the court duty solicitor session.
9. An application for a representation order may not be made by the duty solicitor, or anyone working under the firm's contract, for a matter that concludes on the same day as the court duty solicitor session if the individual received assistance from the court duty solicitor. The only exception to this is where the matter was not within the scope of the court duty solicitor scheme.

## **10.8 Assessment**

1. When the Commission request a sample of files for cost assessment purposes papers relating to recent court duty solicitor sessions claimed will also be requested.
2. The Commission will consider whether or not the defendants assisted were within the scope of the court duty solicitor scheme. Where it is identified that defendants have been advised out of scope, action may be taken to reduce the claim submitted for that session.



# Appendices

# APPENDIX 1 Contract Specification Part B Section 8.2 and Rule 3.1

## 8.2 Service requirements for Police Station Duty Solicitor work

1. In Police Station Duty Solicitor cases the services set out in this Section shall be provided by a Police Station Duty Solicitor or an Accredited Representative in the full or part-time employment of, or a partner in the same firm or organisation as, the Duty Solicitor. You may deploy an Accredited Representative to undertake Police Station Duty Solicitor work in accordance with paragraph 8.2.11 below. For Guidance on what we mean by employment, see Subsection 8.7(in Part B of the Contract Specification).
2. Cases referred by the Call Centre Service to you whilst one of your Duty Solicitors is on Rota duty must be accepted unless the Duty Solicitor named on the Rota is already engaged in connection 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. If the Duty Solicitor is already at the same Police Station when a Client requests the Duty Solicitor, he or she shall notify the Call Centre Service when a request for advice is accepted. If a conflict of interest arises the case must be referred back to the Call Centre Service.
3. You may accept a case referred by the Call Centre Service if the Duty Solicitor named on the Rota is unavailable for one of the reasons set out in paragraph 8.2.2 above but you have another Duty Solicitor available to accept the case without delay who is able to arrange attendance at the Police Station, if necessary, within 45 minutes.
4. You may accept Panel and Back-up cases referred by the Call Centre Service and must use all reasonable endeavours to do so.
5. With written prior approval from us you may use non-Duty Solicitor staff to receive calls from the Call Centre Service, 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 a Duty Solicitor available to make first contact with the Client immediately and which ensure that referrals are passed to such Solicitors immediately; and
  - (c) a Duty Solicitor is available to make first contact with the Client immediately and is able to arrange attendance at the Police Station, if necessary, within 45 minutes.
6. Subject to paragraph 8.2.8 and paragraph 8.2.6(a) below, the following services shall be provided once a case has been accepted:

- (a) except in the case of Former CDS Direct Pilot Cases where a CDS Direct Pilot Telephone Advisor has been involved, initial advice by a Duty Solicitor personally by speaking to the Client either on the telephone or if the Solicitor is at or adjacent to the Police Station and can immediately advise the Client in person. Where the police refuse to permit the suspect to speak to the Duty Solicitor on the telephone, the solicitor may attend the Police Station. If the Client is incapable by reason of drunkenness or violent behaviour of speaking to the Solicitor, initial advice may be postponed. Other circumstances in which initial advice may be postponed include sleep periods or where an interpreter is required. The Duty Solicitor shall make arrangements to provide initial advice as soon as the Client is capable of speaking to him or her. In Former CDS Direct Pilot Cases, nothing in this paragraph shall prevent an Accredited Representative, rather than a Solicitor, from having responsibility for the first contact with a Client after a CDS Direct Pilot Telephone Advisor has had involvement with that Client;
  - (b) attendance at the Police Station to provide advice and to attend all police interviews with the Client during the Duty Period where the Client has been arrested in connection with an offence;
  - (c) attendance at any identification parade, group or video identification or confrontation;
  - (d) attendance at the Police Station where the Client complains of serious maltreatment by the police;
  - (e) 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;
  - (f) representation in connection with an application for a warrant of further detention under Part A, paragraph 2.2.1(d) of this Specification;
  - (g) if a police interview and any identification parade, group or video 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 Duty Solicitor, he or she must make arrangements to ensure that the Client continues to receive advice either by a Duty Solicitor or Own Solicitor. The Duty Solicitor may continue to act on an Own Solicitor basis.
7. Except in Former CDS Direct Pilot Cases where a CDS Direct Pilot Telephone Adviser has been involved, the Duty Solicitor shall give initial advice. On giving initial advice under 8.2.6(a) above, or on you receiving a referral of a CDS Direct Pilot Case from the Call Centre Service instructing you to provide Police Station Attendance, the Duty Solicitor shall exercise his or her discretion whether it is in the interests of the Client for him or her or, if appropriate, an Accredited Representative to attend the Police Station. Attendance is mandatory under paragraphs 8.2.6(b) to (d) and (f) above, unless exceptional circumstances exist (see paragraph 8.2.8 below). In assessing whether attendance is necessary the Duty Solicitor shall consider whether advice can be given over the telephone with sufficient

confidentiality and if he or she can communicate effectively with the Client by this means.

8. If exceptional circumstances exist which justify non-attendance at the Police Station, the Duty Solicitor shall record his or her decision not to attend, including details of the exceptional circumstances and the reasons for the decision on the case file. Exceptional circumstances could arise if a Client expressly instructs the Duty Solicitor not to attend. Exceptional circumstances are less likely to arise in the case of paragraph 8.2.6(d).
9. If the Client is a Services Person at a services establishment or elsewhere assisting with an investigation by the Services Police and suspected of offences contrary to the Services Discipline Acts 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,the Duty Solicitor shall attend personally upon the Client where he or she considers that such attendance is necessary for the protection of the Client's interests.
10. If the Client is a Services Person requiring representation within England and Wales at a custody hearing before a judicial officer under the Armed Forces Discipline Act 2000, the Duty Solicitor shall attend personally upon the Client to provide Advice and Assistance (including Advocacy Assistance).
11. The services described in paragraph 8.2.6 above shall be provided as follows:
  - (a) initial advice under paragraph 8.2.6(a) above shall be provided by a Duty Solicitor where the case has been referred by the Call Centre Service or accepted as a Duty Solicitor case at the Police Station. For the avoidance of doubt, in Former CDS Direct Pilot Cases where a CDS Direct Pilot Telephone Adviser has been involved, nothing in this paragraph shall prevent an Accredited Representative, rather than a Solicitor, from undertaking the first contact with a Client.
  - (b) the services referred to at paragraphs 8.2.6(b) to (e) above shall be provided by a Duty Solicitor or, where appropriate, by an Accredited Representative;
  - (c) the services referred to at paragraphs 8.2.6(f) to (g), 8.2.9 and 8.2.10 above may only be provided by a Duty Solicitor or an Accredited Representative who is a Solicitor where the case has been referred by the Call Centre Service or accepted as a Duty Solicitor case at the Services establishment.If services are provided under (b) or (c) above by an Accredited Representative or Solicitor who is not an employee of the firm, the travel time claimed shall not exceed 45 minutes each way. Where this rule is applied the fares and/or mileage allowed should not exceed that which would have been paid had the journey lasted less than 45 minutes.
12. The Client shall be informed before advice is given of the status of the individual giving such advice.

13. 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.
14. You shall only attend the Police Station when the Sufficient Benefit Test set out in Part B, Rule 2.5, is satisfied. The circumstances when this test will be satisfied include:
  - (a) to provide advice prior to and during interview;
  - (b) to advise at an identification procedure (including a video identification procedure when the Client is not present);
  - (c) when appropriate, to advise on the implications of the caution when the Client is charged with an offence;
  - (d) to advise when the advice may materially affect the outcome of the investigation and goes significantly beyond initial advice;
  - (e) to advise a Client who complains of serious maltreatment by the police.
15. On Assessment of your Claims for Police Station Advice and Assistance we will take into account the factors above when determining whether it was reasonable for you to attend. If none of these are satisfied then further justification shall be provided on file. If one or more of the factors are met, then the attendance will normally be justified, however we may still reduce the Claim if we consider that the time spent was not reasonable.
16. Any attendance must be for the purposes of providing legal advice that could not be given over the telephone to the Client. You may not claim for an attendance when the advice could have been provided reasonably by way of telephone advice. If we consider that the advice could have been provided reasonably over the telephone, we may disallow the costs of any attendance at the Police Station, however, we will take into account any evidence on file that attendance was considered necessary at the time the decision to attend was made. The file must show that the attendance was expected to materially progress the case beyond initial advice. If you were already at the same Police Station, we may cap your Claim to no more than the value of the Police Station Telephone Advice fixed fee if we consider that advice could have been provided reasonably over the telephone. This paragraph shall not apply to any attendance, which is undertaken by way of referral from the Call Centre Service on a CDS Direct Pilot Case.
17. In the following cases, you may provide Police Station Telephone Advice only and you shall not claim from public funds for Police Station Attendance unless one of the exceptions in paragraph 18 below applies:
  - (a) Client detained in relation to a non-imprisonable offence;
  - (b) Client arrested on a bench warrant for failing to appear and being held for production before the court, except where the solicitor has 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 justified 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/drunk 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.

18. You may attend the Police Station to advise on any Matter falling within paragraph 17 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 requires an interpreter or is otherwise 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 17(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.

If any of the above exceptions apply then you must endorse the reasons for attendance on file, otherwise your Claim will be limited to the Police Station Telephone Advice fixed fee.

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

20. If the police indicate that an interview or identification procedure will take place at a specified time, Police Station Telephone Advice may be provided to the Client. You should 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 e.g. taking instructions from the Client, obtaining disclosure of evidence, attending the officer in the case.

21. When you attend the Police Station you shall seek to minimise the travel, waiting and attendance time that you incur. In assessing whether your Claims are reasonable we may take into account the average costs incurred by other CDS Suppliers in your region.

22. You may provide further legal advice to the Client immediately following charge, but it will not be reasonable for you to continue to attend the Client whilst fingerprints, photographs and swabs are taken, except where the Client requires further assistance due to his or her particular circumstances, such as youth or vulnerability, in which case the relevant factors must be noted on file. It is reasonable to remain at the Police Station if you are required to make representations about bail provided that the justification is noted on file.

### **3.1 Rules Applying**

**The Rules in Section 1 and Rules 2.5 (Sufficient Benefit Test), 2.7 (Refusal – Good Cause), 2.11 (Separate Matters) and 2.13 to 2.14 (Further Instructions, Boundary with Representation) of this Part apply to Police Station Advice and Assistance, together with the Rules in this Section.**

### **3.2 Applications**

**Subject to any Arrangements made by the Commission, an application for Police Station Advice and Assistance may be made by telephone to the Solicitor or Representative from whom the Advice and Assistance is sought.**

**A written application is not required for Police Station Advice and Assistance given under Part A, paragraphs 2.2.1(b) or (c) of this Specification.**

### **3.3 Use of Representatives**

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

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

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

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

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

**From 1 April 2003, a Probationary Representative may only provide Police Station Advice and Assistance for the firm (which must hold a General Criminal Contract) at which his or her supervising solicitor is based.**

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

**If work is delegated to a Representative or agent who is not an employee of the firm, the travel time claimed shall not exceed 45 minutes each way. Where this rule 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.**

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

1. You may use staff not employed by you, subject to the Performance Standards. Any work conducted for you by staff not employed by you is subject to the Quality Standards. This includes work conducted by staff who are designated by you and those who are not.
2. If you deploy a Representative not employed under a contract of service by your firm, you must be satisfied that the Representative is competent to do the work i.e. has the necessary skill, knowledge and experience. The Representative must be a Solicitor or currently registered as a Probationary or Accredited Representative.
3. Before attending the Police Station, the Representative must have the telephone number of the conducting Solicitor (including an out of hours number if appropriate).
4. The Representative must be able to contact the conducting Solicitor (or another Solicitor in the firm with sufficient experience of Police Station work) in case the Representative requires guidance as to how to proceed with the case when advising and assisting at the Police Station.
5. A written report on the case must be submitted to the conducting Solicitor by the Representative once the attendance at the Police Station has concluded and at the latest by the next working day.
6. A supervising Solicitor for a Probationary Representative shall document, within 7 days of the Representative's inclusion on the Police Station Register:
  - (a) the dates by which a further test needs to be passed at 6 months and all tests within 12 months to avoid suspension from the Register;
  - (b) the process that the supervising Solicitor will use to ensure that the Probationary Representative's work is quality assured.

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

### **3.4 Serious Service Offences/Armed Forces Custody Hearings**

**A Representative who is not a Solicitor shall not advise a Client who is being investigated in connection with a Serious Service Offence or at an application to extend detention in military custody before a judicial officer under the Armed Forces Discipline Act 2000.**

1. Military suspects being investigated for military offences other than summary only must receive Advice and Assistance from a Solicitor and shall not be advised by a non-Solicitor Representative.
2. The Armed Forces Discipline Act 2000 amends the relevant Service Acts by introducing an entitlement for services personnel to be legally represented at a pre-charge custody hearing. Representation at such hearings must be provided by a Solicitor, not a non-Solicitor Representative.

### 3.5 Investigations by Non-Police Agencies

**You may not claim for an attendance for providing 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.**

1. You may be entitled to claim this work as Advice and Assistance if the Client meets the Qualifying Criteria.
2. An interview with a Volunteer may take place in a location other than a Police Station e.g. the person's home, or the offices of an investigating agency. The crucial element of the definition of "Police Station" is that a Constable must be present. A Constable includes an officer of HM Customs and Excise, a British Transport Police officer or any official with a power of arrest conferred by virtue of his or her office. It does not, however, include any other investigators, e.g. government departments, local authority, Post Office, SFO or Inland Revenue Fraud Investigators even if they have power to search premises or are required by section 66(9) of the Police and Criminal Evidence Act 1984 (PACE) to have regard to the PACE Codes of Practice. The provisions of PACE apply to all non-police investigators, including government departments, such as the DTI, as well as the Post Office, SFO and others.
3. If you provide Advice and Assistance to a Volunteer in circumstances where a Constable is not present, then you will not be entitled to claim for the work as Police Station Advice and Assistance. The work may be remunerated as Advice and Assistance if the Client satisfies the Qualifying Criteria, otherwise you may be paid on a private client basis.

### 3.6 Immigration Advice

**Where you give Police Station Advice and Assistance and it is apparent, or becomes apparent, that an immigration offence may have been committed or that an immigration issue arises, you shall give Advice and Assistance to the Client up until the point where the immigration authorities take over conduct of the investigation. You may continue to advise after this point if the Client remains in detention and requires advice, however you should consider whether it is practicable to refer the immigration offence or issue to a supplier with a contract in the immigration Category of Work in the local area (which may include your firm).**

1. For the purposes of this Rule, an "immigration offence" means a breach of the Immigration Acts, such as illegal entry, overstaying leave to enter or remain, breaching a condition of leave, an offence under the Asylum and Immigration Appeals Act 1993 or failure to observe a condition of temporary admission or release. This list is not exhaustive.
2. For the purposes of this Rule, an "immigration issue" arises where an individual is arrested or attends the Police Station as a Volunteer in relation to alleged criminal conduct and it is apparent, or becomes apparent, that an immigration offence may have been committed or there is some other issue regarding the Client's immigration status.
3. You may not generally give Police Station Advice and Assistance under this Contract where:

- (a) an individual is detained after entry and is served with illegal entry papers or a notice of intention to deport;
  - (b) an individual is detained by the immigration authorities on entry;
  - (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.
4. Where the Client remains in detention and advice is required and it is not practicable to refer the Client to an immigration SQM holder, 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.
5. The SQM requires that you have a clear policy and procedures for referral. We would expect organisations to build links with immigration suppliers and document details of appropriate suppliers to which you will refer Clients.

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

1. Own Solicitor Police Station Attendances may only be undertaken by a Representative (including a Solicitor who is also a Representative) or:
- (a) (for work done before 00.01 on 1 November 2005) any Solicitor;
  - (b) (for work done after 00.01 on 1 November 2005 but before 00:01 on 1 November 2006) a Solicitor who is on the Police Station Register and has not been suspended;
  - (c) (for work done after 00.01 on 1 November 2006) a Solicitor holding the Police Station Qualification under the Law Society's Criminal Litigation Accreditation Scheme;
  - (d) (for work done on or after 00.01 on 1 November 2005, where the firm is a member of the Specialist Fraud Panel and the offence for which the client has been arrested is primarily or substantially based on allegations of fraud or other serious financial impropriety or involves complex financial transactions or records) a Solicitor.
2. Subject to paragraph 3.7.3 below the following services shall be provided once a case 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 or video identification or confrontation;
  - (c) attendance at the Police Station where the Client complains of serious maltreatment by the police;

3. If exceptional circumstances exist which justify non-attendance at the Police Station, the Own Solicitor or Representative shall record his or her decision not to attend, including details of the exceptional circumstances and the reasons for the decision on the case file. Exceptional circumstances could arise if a Client expressly instructs the Own Solicitor or Representative not to attend. Exceptional circumstances are less likely to arise in the case of paragraph 3.7.2(c).
4. You shall only attend the Police Station when the Sufficient Benefit Test set out in Part B, Rule 2.5 is satisfied. The circumstances when this test will be satisfied include:
  - (a) to provide advice prior to and during interview;
  - (b) to advise at an identification procedure (including a video identification procedure when the Client is not present);
  - (c) when appropriate, to advise on the implications of the caution when the Client is charged with an arrestable offence;
  - (d) to advise when the advice may materially affect the outcome of the investigation and goes significantly beyond initial advice;
  - (e) to advise a Client who complains of serious maltreatment by the police.
5. On Assessment of your Claims for Police Station Advice and Assistance we will take into account the factors above when determining whether it was reasonable for you to attend. If none of these is satisfied then further justification shall be provided on file. If one or more of the factors are met, then the attendance will normally be justified, however we may still reduce the Claim if we consider that the time spent was not reasonable.
6. Any attendance must be for the purposes of providing legal advice that could not be given over the telephone to the Client. You may not claim for an attendance when the advice could have been provided reasonably by way of telephone advice. If we consider that the advice could reasonably have been provided over the telephone, we may disallow the costs of any attendance at the Police Station, however, we will take into account any evidence on file that attendance was considered necessary at the time the decision to attend was made. The file must show that the attendance was expected to materially progress the case beyond initial advice. If you were already at the same Police Station, we may cap your Claim to no more than the value of the Police Station Telephone Advice fixed fee if we consider that advice could have been provided reasonably over the telephone.
7. In the following cases, you may provide Police Station Telephone Advice only and you shall not claim from public funds for any Police Station Attendance unless one of the exceptions in paragraph 8 below applies:
  - (a) Client detained in relation to a non-imprisonable offence;
  - (b) Client arrested on a bench warrant for failing to appear and being held for production before the court, except where the solicitor has 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 justified 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/drunk 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.
8. You may attend the Police Station to advise on any matter falling within paragraph 6 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 requires an interpreter or is otherwise 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 6 (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.

If any of the above exceptions apply then you must endorse the reasons for attendance on file, otherwise your Claim will be limited to the Police Station Telephone Advice fixed fee.

9. An attendance at the Police Station for an ineffective bail to return may be disallowed if checks were not made prior to the attendance to establish whether it would be effective.
10. If the police indicate that an interview or identification procedure will take place at a specified time, Police Station Telephone Advice may be provided to the Client. You should 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, e.g. taking instructions from the Client, obtaining disclosure of evidence, attending the officer in the case.
11. When you attend the Police Station you shall seek to minimise the travel, waiting and attendance time that you incur. In assessing whether your Claims are reasonable we may take into account the average costs incurred by other CDS Suppliers in your region.
12. You may provide further legal advice to the Client immediately following charge, but it will not be reasonable for you to continue to attend the Client thereafter whilst fingerprints, photographs and swabs are taken, except where the Client requires further assistance due to his or her particular circumstances, such as youth or vulnerability, in which case the relevant factors must be noted on file. It is reasonable

to remain at the Police Station if you are required to make representations about bail, provided that the justification is noted on file.

## **APPENDIX 2 Law Society guidance on indictable only cases**

### **POLICE STATION ADVICE IN INDICTABLE ONLY CASES**

#### **GUIDANCE FROM THE CRIMINAL LAW COMMITTEE OF THE LAW SOCIETY**

A non-solicitor who is registered with the Legal Services Commission but who has not obtained accreditation (a probationary representative) will not be paid by the Legal Services Commission for giving advice at a police station in an indictable only case.

The Criminal Law Committee of the Law Society gives the following guidance to solicitors and their representatives.

1. Before a probationary representative accepts instructions to attend at a police station to give advice for which it is intended to claim from the Legal Services Commission, it is necessary for him or her to establish that the offence(s) under investigation are not indictable only.
2. Solicitors and their representatives are already advised by the Law Society to obtain information on the telephone from the custody officer about the offence(s) under investigation. The custody officer should be asked to indicate the most serious matter being investigated and the most reasonable charge anticipated. The Metropolitan Police have already issued guidance to custody officers to give this information to solicitors and their representatives and they have also advised officers that if during the course of an investigation into an either way offence, new information comes to light which indicates that the matter may become an indictable only offence, they will make that information known to the legal representative at the earliest opportunity. The Association of Chief Police Officers (ACPO) is considering whether to recommend that custody officers nationally are given similar advice.
3. When the investigation is continuing after the representative's first telephone contact with the police, the longer the delay before the representative attends the police station, the more up-to-date the information will be about the likely level of the suspected offence.
4. This should be balanced against the fact that the Law Society already advises that an immediate attendance on a suspect may be necessary if the suspect has already spent some time in custody, is vulnerable or complains of ill-treatment and that adequate time must be left before interview in order for the representative to prepare to attend the police station, and consult fully with the custody officer, investigating officer, client and any third party such as an appropriate adult or interpreter.
5. Where a probationary representative goes to the police station to advise on an either way case and the police subsequently decide to investigate on the basis of an indictable only case then the Legal Services Commission will pay for advice and assistance from the probationary representative. However, if there is a suitable break in the interviewing it would be good practice for the solicitor having conduct of the case then to send a person authorised to advise in indictable only cases.

6. The Legal Services Commission may request a copy of the custody record to ensure that it was reasonable for the probationary representative to have attended in the first place.
7. On arrival at the police station, the representative should immediately consult the custody record to confirm the information which he or she should have already received from the custody officer.

# APPENDIX 3 Contract Specification Part E – Remuneration under the General Criminal Contract

## 1. The rates that apply to Contract Work

1. The rates set out in this Part apply to Contract Work undertaken by suppliers that hold a one year or three year General Criminal Contract. Other than the file review payment, they do not apply to work that commenced under the Legal Aid Act 1988. Such work will continue to be remunerated at the rates set out in regulations made under that Act (see Part B, Rule 1.5 Transitional Provisions).
2. The basis on which we assess Claims is set out in Part C, Rule 1.13.

**Note:**

*All rates are hourly, except where otherwise indicated. “Unsocial hours” means between the hours of 5.30 pm and 9.30 am on any business day and any time on a day which is not a business day. “Business day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a bank holiday under the Banking and Financial Dealings Act 1971. The London rates apply to a fee-earner whose office is situated within the Commission’s London region.*

*If an office situated outside London region instructs an office within that region to act as agent, then London rates apply to the agent’s work. If a London based office instructs an office outside London to act as agent, then that work must be charged at national rates.*

## 2. Work undertaken in the Criminal Investigations Class

### 2.1 Advice and Assistance (other than Police Station Advice and Assistance)

	<b>National</b>	<b>London</b>
Preparation	46.90	49.70
Travel and waiting	26.30	26.30
Routine letters written and routine telephone calls	3.70 per item	3.85 per item

## 2.2 Police Station Advice and Assistance

	National	London
Availability during Duty Period	4.20 (to a max of 100.80)	4.25 to a max of 102.00)
Police Station Advice and Assistance other than by telephone		
- Duty Solicitor (unsocial hours)	69.05	69.05
- Duty Solicitor (other hours)	52.00	56.20
- Own Solicitor	52.00	56.20
- Duty Solicitor – serious offences (unsocial hours)	80.00	80.00
- Duty Solicitor – serious offences (other hours)	60.00	60.00
Travelling and waiting		
- Duty Solicitor (unsocial hours)	69.05	69.05
- Duty Solicitor (other hours)	52.00	56.20
- Own Solicitor	28.80	28.80
Police Station Telephone Advice fixed fee (including all telephone calls whether “routine” or “advice”, (except CDS Direct Pilot Cases for which no such fee may be claimed)).	30.25 per Claim	31.45 per Claim
Fixed Acceptance Fee (former CDS Direct Pilot Cases referred to a Duty Solicitor for Police Station Attendance only)	8.00 per Case	8.00 per Case

### Notes:

**The provisions set out below apply to all Criminal Investigations that commence after 00:01 on 1 February 2004 (except that the reference to the CDS Direct Pilot Cases applies from 00.01 31 October 2005):**

1. Except in the case of CDS Direct Pilot Cases (in respect of which no Police Station Telephone Advice fixed fee is claimable by you) one Police Station Telephone Advice fixed fee may be claimed by you per investigation provided that you undertake at least one telephone call during the investigation. An “investigation” is defined as all the work undertaken for one Client in respect of an arrest or arrests made at the same time. No further fixed fee may be claimed by you if any further arrest of the same Client takes place at any time at a Police Station or other place of detention whilst the investigation continues.

2. An investigation ends either when the Client is charged or summoned, or the investigation concludes in any other way e.g. no further action by police.
3. An arrest on warrant or for breach of bail is a separate investigation and attracts a separate Police Station Telephone Advice fixed fee, except where the arrest is made at a Police Station or other place of detention during an investigation for which a fixed fee payment is already claimable.
4. Only one Police Station Telephone Advice fixed fee may be claimed per investigation, irrespective of the number of telephone attendances on the Client, police or other parties during the course of the investigation.
5. If a Client is bailed to return to the Police Station, that is a continuation of the same investigation and no further fixed fee may be claimed.
6. If you advise more than one Client during the course of a single investigation, one fixed fee may be claimed for each Client who receives Police Station Telephone Advice.
7. A Police Station Telephone Advice fixed fee shall not be claimed if the Solicitor or Representative accepts a Matter whilst already in attendance at the same Police Station unless the investigation has not concluded as a result of the attendance.

**Examples of a single investigation i.e. one fixed fee is claimable:**

- (a) *Client is arrested for handling a stolen credit card and is bailed from the Police Station. On the bail to return he or she is rearrested for a series of obtaining by deception offences.*
- (b) *Client is arrested for assault and burglary and taken to the Police Station. At the Police Station drugs are found and he or she is arrested for this new offence.*
- (c) *Client is arrested for theft and taken to the Police Station where he or she is further arrested on an old warrant for criminal damage.*

**Examples of more than one investigation i.e. more than one fixed fee is claimable:**

- (a) *Client is arrested for theft from a shop and is bailed to return to the Police Station. The next day he or she is arrested for another theft from a shop.*
  - (b) *Client is arrested for burglary, he or she fails to appear at court and is arrested on the street for failing to appear.*
8. Both of the above cases would attract two separate fixed fee claims as each amounts to two separate investigations.

**The provisions set out below apply to all Police Station Attendances that take place after 00:01 on 1 February 2004:**

9. Duty Solicitor rates may be claimed only when a Duty Solicitor or Accredited Representative is acting as such in accordance with this Contract and The Duty Solicitor Arrangements 2001 (as amended) 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.
- 10. Any subsequent Police Station Advice and Assistance provided by the same firm on the same Matter e.g. if the Client is bailed to return to the Police Station, shall be claimed at Own Solicitor rates.
- 11. Duty Solicitor serious offence rates may be claimed for Police Station Attendances provided that:
  - (a) the attendance is to advise a client under arrest for one or more of the following serious offences, either as a principal or as a secondary party, or who has been arrested on a warrant for failing to answer bail or an extradition warrant in respect of a case in which he or she is accused of such an offence:
    - i) Treason (common law);
    - ii) Murder (common law);
    - iii) Manslaughter (Homicide Act 1957 and common law);
    - iv) Causing death by dangerous driving (Section 1 Road Traffic Act 1988);
    - v) Rape (Section 1 Sexual Offences Act 2003);
    - vi) Assault by penetration (Section 2 Sexual Offences Act 2003);
    - vii) Rape of a child under 13 (Section 5 Sexual Offences Act 2003);
    - viii) Assault of a child under 13 by penetration (Section 6 Sexual Offences Act);
    - ix) Robbery (Section 8 Theft Act 1968);
    - x) Assault with intent to rob (common law);
    - xi) Arson (Sections 1(1), 1(2) or 1(3) Criminal Damage Act 1971);
    - xii) Perverting the course of public justice (common law);
    - xiii) Conspiracy to defraud (common law);
    - xiv) Kidnapping (common law);
    - xv) Wounding or grievous bodily harm (Sections 18 and 20 Offences against the Person Act 1861);
    - xvi) Conspiracy to commit any of the above offences (Section 1 Criminal Law Act 1977);
    - xvii) Soliciting or inciting to commit any of the above offences (common law);
    - xviii) Attempting to commit any of the above offences (Sections 1 or 1A Criminal Attempts Act 1981);
    - xix) Any offence if the client is accused of possessing a firearm, shotgun or imitation firearm;
    - xx) Any offence if the client is detained under section 41 of the Terrorism Act 2000.
  - (b) Duty Solicitor rates would normally be payable.
  - (c) The attendance is personally undertaken by a Duty Solicitor employed by the firm accepting the case, or by a Duty Solicitor who is a partner in the firm accepting the case.
- 12. These rates only apply to Claims relating to:
  - (a) attendances undertaken throughout a Duty Period; and

- (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.
- 13. There are no serious offence rates for Telephone Advice, travelling or waiting. These rates remain the same whether or not serious offences are involved.
- 14. These rates may not be claimed by CDS Suppliers that have had their Claims assessed at “category 3” 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.

### **How to identify Duty Solicitor work**

- 15. Duty Solicitor work attracts higher rates than Own Solicitor work, and entails different service obligations (for instance, it may not be undertaken by a Probationary Representative). If work is deemed to be Duty Solicitor work, then Duty Solicitor rates apply and you must comply with the relevant service obligations.
- 16. Work is always deemed to be Duty Solicitor work if both (a) and (b) below apply:
  - (a) The case is accepted from the Call Centre Service or accepted at the Police Station as a Duty Solicitor case and notified to the Call Centre; and
  - (b) The work takes place before the end of the Duty Period (for rota cases) or is initial advice (for Panel and Back-up cases).
- 17. You may deem work to be Duty Solicitor work if either (a) or (b) below applies:
  - (a) The work takes place during a Duty Period (however the case was accepted); or
  - (b)
    - (i) The case is accepted from the Call Centre Service or accepted at the Police Station as Duty Solicitor and notified to the Call Centre Service; and
    - (ii) The work is undertaken during the initial continuous period of custody.
- 18. All other attendances shall be treated as Own Solicitor.

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

- (a) *Duty Solicitor is on rota from 6 pm to 6 am: A case is accepted from the Call Centre Service at 4 am and continues after the end of the rota period at 6 am. If the CDS Supplier continues to meet the requirements of the Duty Solicitor Arrangements and other contractual requirements for Duty Solicitor work, then Duty Solicitor rates can be claimed until the end of the Client’s initial period of detention. Alternatively, once the Duty Period ends at 6 am and initial advice has been provided by the Duty*

*Solicitor (or Accredited Representative if CDS Direct Pilot has been involved), the CDS Supplier may convert to an Own Client basis, send a Probationary Representative if the Matter is non indictable only and claim Own Client rates from that point.*

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

*Hotel expenses actually and reasonably incurred may be claimed as a Disbursement by a Duty Solicitor whilst on a Police Station Duty Solicitor Rota.*

*The rates in the above table also apply to work undertaken by an Accredited or Probationary Representative deployed in accordance with the Rules in this Specification and the Duty Solicitor Arrangements 2001. Advice and Assistance given by a Representative will not be remunerated unless he or she was registered and met the requirements of the Contract and the Arrangements when the advice was given.*

*Where Police Station Advice and Assistance is provided by a Representative or Solicitor who is not an employee of the firm, the travel time claimed shall not exceed 45 minutes each way.*

### **2.3 Advocacy Assistance on a Warrant of Further Detention or at an Armed Forces Custody Hearing**

	<b>National</b>	<b>London</b>
Preparation		
- Standard Rate	46.90	49.70
- Enhanced Rate	62.50	66.30
Advocacy		
- Standard Rate	59.00	59.00
- Enhanced Rate	78.65	78.65
Travelling and waiting		
- Standard Rate	26.30	26.30
- Enhanced Rate	35.05	35.05
Routine letters written and telephone calls	per item	per item
- Standard Rate	3.70	3.85

-	Enhanced Rate	4.90	5.10
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**Note:**

*The enhanced rate applies to Duty Solicitors providing Advocacy Assistance in unsocial hours only. The standard rate applies to Advocacy Assistance provided by Duty Solicitors outside unsocial hours and Own Solicitors at any time.*

## APPENDIX 4 Contract Specification Part C Rule 1.18

### 1.18 Disbursements

Disbursements may be incurred where it is in the best interests of the Client to do so and it is reasonable for you to incur the Disbursement for the purpose of giving Advice and Assistance, Advocacy Assistance or Representation to the Client and the amount of the Disbursement is reasonable.

We may in Guidance prescribe types of Disbursements which may or may not be incurred in the provision of Advice and Assistance, Advocacy Assistance or Representation.

1. Disbursements will form part of Claims to be paid. We will monitor your use of Disbursements via auditing and Assessment and may seek explanations and justifications as necessary. You should therefore incur Disbursements where it is in the Client's best interests to do so in the particular circumstances, subject to the provision as to reasonableness and to Guidance. You must produce a receipted invoice or voucher in support of any Disbursement claimed.
2. A non-exhaustive list of Disbursements which may or may not be incurred in the provision of Advice and Assistance (including Advocacy Assistance) appears below. Remember that any Disbursements appearing in Section A can only be incurred in any circumstances if it is reasonable to do so for the purposes of providing Advice and Assistance in relation to that Matter and if the amount is reasonable.

<b>Section A</b> <b>Disbursements which may be incurred</b>	<b>Section B</b> <b>Disbursements which may not be incurred</b>
Birth and other certificates	Clients' travelling and accommodation expenses
Counsel's fees	Court fees unless for a search/photocopies
Enquiry agents' and foreign language interpreters' fees	Sign language interpreters' fees (except where it would be unreasonable to expect the supplier to make the adjustment) under the Disability Discrimination Act 1995
Experts' fees including for medical reports	
Fees recoverable on oaths	
Newspaper advertisements	
Photographers' accounts	
Travelling expenses of a Solicitor, including a Solicitor in the capacity of	

3. If you are considering incurring a Disbursement which appears in neither list then you must consider whether the Disbursement is recoverable or not by reference to its purpose (that is, is it for the purpose of providing Advice and Assistance). For example, an accountant's fees for the preparation of outstanding accounts will not be recoverable as they are incurred not for the purpose of giving Advice and Assistance but for the purpose of putting the Client's outstanding records in order. This contrasts with the position where the accountant is providing a report as an expert.
4. The cost of the provision of legal advice by a person who is neither a lawyer nor supervised by a lawyer cannot be treated as a Disbursement. The assistance of a non-lawyer can be sought but you must absorb this as an overhead rather than charge it as a Disbursement.
5. Except where Police Station Advice and Assistance is provided, a Solicitor agent cannot be employed in relation to the provision of Advice and Assistance, either as a Disbursement or as an element of profit costs, (but see the position of Solicitors with higher rights of audience set out in paragraph 9 below). If you are not in a position to undertake work yourself then the matter should be referred. In appropriate cases you can obtain the opinion of Counsel. A Solicitor agent may be used where Advocacy Assistance is provided (excluding court Duty Solicitor work).
6. In deciding whether the amount sought is reasonable regard must be had to all the circumstances including the purpose of the Disbursement in the context of the particular case (that is, having regard to the justification/need for it as against the value/importance of the case), the particular service involved, the extent to which there is a choice of alternative service providers and whether all elements of the service are justified in the particular case/at the particular time.
7. If a Disbursement is abnormally large by reason of the distance of the court or the Client or both from your office, payment may be limited to what would otherwise be reasonable, having regard to all the circumstances. If the amount claimed is unreasonable, a lesser sum may be allowed. If the Disbursement was not reasonably incurred, the whole sum may be disallowed.
8. It will not be usual to instruct Counsel as part of the provision of Advice and Assistance unless it is reasonably necessary to do so. Where it is clear that there are issues which would justify steps, including proceedings, being taken on the Client's behalf but the reasonably competent Solicitor cannot, based on his or her expertise, identify those steps, then it may be appropriate to allow Counsel's opinion to be obtained under Advice and Assistance to identify the precise steps or proceedings.
9. References to Counsel for the purposes of the Guidance to this Rule include reference to a Solicitor with higher rights of audience practising in another firm where that Solicitor is carrying out work which would otherwise be carried out by Counsel.

10. Where the opinion of Counsel or another expert is required on a question of foreign law, this cannot be covered by Advice and Assistance. In appropriate cases, an application for Representation should be made.
11. Advice and Assistance should not be used as a vehicle to secure the funding of Disbursements. Where the only work undertaken is incurring the Disbursement and passing the service on to the Client, it is likely that the costs will be disallowed on Assessment if the Client receives no oral or written legal advice.
12. The responsibility for providing and paying for sign language interpreters will normally fall on the supplier in accordance with the Disability Discrimination Act 1995, in which case the fees are considered an administrative overhead and may not be claimed from us. In exceptional cases where the supplier considers it would not be reasonable to make the adjustment, the fees may be claimed from us. Not to incur the disbursement may inhibit the client's ability to receive assistance. In those exceptional circumstances we consider the expenses to be unusual in their nature and you may therefore apply to the Regional Director for prior authority before the expenditure is incurred. We may refer any such application received to the CDS Policy Team for consideration.

## **APPENDIX 5 Contract Specification Part C Rule 1.13**

### **1.13 Basis of Assessments and Appeals**

**Any Assessment made by the Regional Director under Rule 1.1 of this Part, any appeal to the Costs Committee under Rule 1.11 of this Part and any appeal considered by the Cost Appeals Committee under Rule 1.12 of this Part shall take place on the basis of determining the reasonableness of the work done and whether the time spent is reasonable in accordance with the requirements of the Contract and Guidance and applying the remuneration rates set out in Part E of this Specification to each Class of Work. You must only claim for work that has been reasonably done in accordance with the provisions of this Contract and that is supported by appropriate evidence on the file. You are not entitled to claim payment for unrecorded time.**

**Disbursements will be assessed on the basis of determining whether they were reasonably incurred and are reasonable in amount subject to any prior authority granted.**

1. Determining reasonableness will involve, in general terms, taking into account all the relevant circumstances of the case including the nature, importance, complexity or difficulty of the work and the time involved; and allowing a reasonable amount of time in respect of all Contract Work actually and reasonably done in accordance with terms of this Contract (including in particular the Rules and Guidance in this Specification). “Reasonable” means what is reasonable for the proper conduct of the case
2. The relevant remuneration rates in Part E of this Specification will then be applied to the time allowed and the resulting sum or standard fee will be added to any Disbursements allowed and to any VAT to produce a figure for the costs of the case. Allowance will not be made for work which is not evidenced on the file in the form of timed and dated attendance notes, and where appropriate by relevant documentation, such as copies of documentation drafted or perused.
3. We may ask you to provide an attendance note or other record of time spent. If your Claim is not supported by written evidence, then it will not be paid under the Contract.
4. When assessing Claims we will apply our published Guidance, except where it is expressly overridden by this Contract, which currently includes the Police Station and Court Duty Solicitor Costs Assessment Manual and the Criminal Bills Assessment Manual. The Commission’s published Guidance on the assessment of costs of controlled work will apply to the provision of freestanding Advice and Assistance so far as it is consistent with the terms of this Contract. You must be familiar with the contents of these manuals and any other Guidance on criminal costs Assessment produced by us and ensure that Claims are made in accordance with the published Guidance. The Guidance may be amended from time to time by us, for example, to reflect new decisions made by either the courts or the Costs Appeals Committee.

# APPENDIX 6 Contract Specification Part C Rule 1.1

## 1.1 Assessment and Information to be retained on file

Each file assigned a unique file number (UFN) shall contain the following information:

- (a) a copy of the original application for Advice and Assistance or Advocacy Assistance, where applicable, and any subsequent applications for a further Authorised Level of Service (excluding an application for a representation order);
- (b) a breakdown of the work undertaken within each Unit of Work in respect of which payment is claimed in accordance with Part E of this Specification;
- (c) the dates on which each item of work was done, the time taken, the amount claimed and whether the work was done for more than one Client;
- (d) a list of any Disbursements claimed, the circumstances in which they were incurred and the amounts claimed;
- (e) the original representation order, together with any amendments (where relevant);
- (f) supporting invoices, receipts, vouchers and grants of prior authority or extensions to the upper limit (where relevant);
- (g) a record of any fees agreed with Counsel; and
- (h) details of any special circumstances relevant to Assessment.

The relevant Regional Director may assess the Claim (either before or after the credit in relation to that Claim has been given) as to the reasonableness of the work done in accordance to Rule 1.13 in this Part. Where an Assessment is carried out after a credit has been given in relation to any Matter or Case, then that credit may be adjusted accordingly.

1. The above information may be called for by the Regional Director for the purposes of Assessment. It will also be required on audit.
2. The setting off of credits against your Standard Monthly Payments will be without prejudice to our right to assess.
3. Although we have the right to assess every case that you claim for, we will normally assess a sample of your Claims and apply those findings by way of Assessment to other files instead. This is to avoid the cost and delay to both you and us that would be caused by our assessing every individual case.
4. Paragraphs (b), (c) and (d) of this Rule will be complied with by completing the form provided by us and retaining it on file.

## APPENDIX 7 Contract Specification Part B Rule 7.9

### 7.9 Distant Solicitors

**Contract Work must generally be provided from your office. Subject to the Guidance below, Contract Work may be provided to a Client on an individual basis where he or she for good reason cannot attend your office and it is reasonable in the circumstances for you to accept instructions from that Client.**

**Nothing in this Rule prevents you from giving Police Station Advice and Assistance, Advocacy Assistance or Representation at the appropriate court or tribunal or from travelling from your office to attend on Counsel, experts, witnesses or site inspections where it is appropriate to do so as part of the provision of Contract Work.**

1. You should consider whether it is in all the circumstances appropriate to accept instructions having regard to the service to be provided to the Client and the costs of providing that service. There must be a good reason why the Client cannot be seen at your premises. Good reason will be where:
  - (a) the Client is in custody or detention, for example in a prison, Police Station, immigration detention centre or mental hospital;
  - (b) the Client is in hospital;
  - (c) a home visit is justified – this will be where the Client is elderly, ill or disabled or is caring for another person who is elderly, ill or disabled and in either case the Client is as a result unable to travel to your office. Note that a home visit is unlikely to be justified if the incapacity is temporary and the provision of Contract Work could be postponed without prejudice to the Client.
2. The reason relied upon must always be noted by you and kept on the file.
3. Even where there is good reason, you should consider whether it will be a more appropriate use of funds to advise without the need for personal attendance, (e.g. through a postal application and telephone advice). However, where it will be necessary for you to travel to see a Client who is at a distance from you, then you should consider whether it is reasonable to refer that Client to a more local Contractor, rather than accept instructions. Subject to paragraphs 4 and 5, it is unlikely to be reasonable for you to accept instructions from such a Client where the one way travelling time for you to visit the Client will be more than one hour.
4. You may exceed the allowable travelling times set in paragraph 3 above in any individual case if:
  - (a) there is no other more local Contractor available (including, if necessary, at short notice); or
  - (b) the Client's problem is so specialised that, in your reasonable view, there is no more local Contractor with the expertise to deal with the case; or

- (c) you have significant previous knowledge of the case or dealings with the Client in relation to the issues raised by the case so as to justify renewed involvement even though the Client is at a distance; or
- (d) your local court or the remand centre where the Client is located is more than one hour's travelling time away.

These factors must be balanced against the distance between you and the Client in terms of accessibility for the Client and increased costs of travel/travelling time. The greater the distance the greater the justification which will be required.

- 5. It is unlikely to be justified in any event for you to travel to attend on a Client at a significant distance from you, involving a one way travelling time of more than two hours in the absence of exceptional circumstances, for example where you are already engaged on a matter and the Client having been in custody at a centre local to you, is moved to a prison further away. Even where a longer time could be apportioned between a number of Clients on a particular occasion, this will not justify a longer travelling time because it will not necessarily always be possible to apportion in the same way on all occasions. A longer travelling time of up to three hours one way may be justified if you are acting for a prisoner and at least one of the criteria in paragraphs 4(a) to (c) above is satisfied.
- 6. The reason for you accepting instructions and or making the journey when the Client is at a distance from you should be noted and kept on the file.
- 7. Where you do not consider that accepting instructions from a Client at a distance is justified, you should refer the Client to an appropriate source of information (such as the relevant Regional Office) regarding Contractors with relevant expertise who are more local to the Client.
- 8. If on Assessment we consider that Disbursements are abnormally large by reason of the distance of the court or the Client's residence or both from your office(s), we may only allow an amount which is reasonable having regard to all the circumstances.

## APPENDIX 8 ACPO Guidance (circulated 6 July 2001)

### Guidance on provision of interpreters at police stations for defence solicitors

The purpose of this document is to raise awareness of an issue that may arise within the custody environment.

The Lord Chancellor's Department has issued advice from the Legal Services Commission which states:

*When a defence solicitor requires an interpreter to facilitate the provision of advice between solicitor and client, a different interpreter, where practicable, should be used. Where this is not practicable the client may, through his or her defence solicitor, consent to the use of a police appointed interpreter.*

This issue has been raised at the Interpreters Working Group, a sub group of the Trials Issue Group, on which both ACPO and the Law Society are represented. The following is provided as guidance on this issue and needs to be viewed against the National Agreement.

Part of the National Agreement states that by the end of 2001, only those foreign language interpreters who are registered with the National Register of Public Service Interpreters (NRPSI) and those British Sign Language interpreters and lipspeakers who are registered with the Advancement of Communication with Deaf People (CACDP) should be used.

The advantages of using interpreters from the registers maintained by these two organisations is that they are bound by a code of conduct together with associated disciplinary procedures. These provisions provide quality assurance to an individual who needs to engage an interpreter to facilitate communication. It also emphasises the importance of using an interpreter from either register for criminal investigations and proceedings.

Codes of impartiality and independence form part of the professional codes of conduct referred to above. There should not, therefore, be any ethical or professional reason why the same interpreter could not be used for police and defence interaction with a suspect.

However, defence solicitors may wish to appoint their own interpreter to facilitate legal consultation. Where this is so the defence is responsible for the arrangements for this interpreter and the terms of engagement and payment.

The Law Society also signed up to the National Agreement and any interpreter used should be a member of either the NRPSI or CACDP.

The defence interpreter should interpret for legal consultation only.

Any requirement by a defence solicitor should be recorded in the custody record log. Any delays that ensue because of this requirement should be taken into account in any PACE detention review. Given the responsibilities of a review officer the use of bail may be appropriate when the seriousness of the offence is taken into consideration. The issue of a defence interpreter must be addressed therefore at an early stage of a suspect's detention.

## APPENDIX 9      Duty Solicitor Points of Principle

The following table sets out the current status of all points of principle determined under the Legal Aid Act 1988 and any new points determined under the Access to Justice Act 1999 with the reference to the relevant paragraph in the Police Station and Court Duty Solicitor Costs Assessment Manual

DS1	Obsolete
DS2	Retain (PACE 7.11)
DS3	Retain (PACE 3.2)
DS4	Retain (PACE 9.5)
DS5	Obsolete
DS6	Retain (PACE 3.2)
DS7	Retain (PACE 7.6)
DS8	Retain (PACE 7.5)

## **APPENDIX 10 Contract Specification Part B Section 8.3**

### **8.3 Service Requirements for court Duty Solicitor cases**

1. A Duty Solicitor at a magistrates' court shall provide the following services to any defendant who wishes to receive Advice and Assistance or Advocacy Assistance:
  - (a) advice to a Client who is in custody;
  - (b) the making of a bail application unless the Client has received such assistance on a previous occasion.
2. The Duty Solicitor may subject to paragraph 8.3.3 below also provide:
  - (a) Advice and Assistance (including 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 or of the Client;
  - (b) Advice and Assistance (including 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 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 shall enquire whether the Client wishes to instruct another Solicitor to act for him or her. If the Client does so wish, the Duty Solicitor shall insert the name of that Solicitor in the application form;
  - (e) Advice and Assistance and, where appropriate, Advocacy Assistance to a parent or guardian in connection with a proposal by the court to bind over the parent or guardian under section 150 of the Powers of Criminal Courts (Sentencing) Act 2000 or in breach of such an order;
  - (f) Advice and Assistance and, where appropriate, Advocacy Assistance, to a respondent in proceedings under sections 1 or 1D (anti-social behaviour order), 2 or 2A (sex offender order) or 8(1)(b), (c) or (d) (parenting order) of the Crime and Disorder Act 1998 or of an applicant or respondent in proceedings to vary or discharge an order made against that person;
  - (g) Advice and Assistance and, where appropriate, Advocacy Assistance to a respondent in proceedings under sections 2 and 5 of the Anti-social Behaviour Act 2003 relating to the making or extension of a closure order;

- (h) Advice and Assistance and, where appropriate, Advocacy Assistance, to a respondent in proceedings under section 14B (banning orders made on complaint), an applicant in proceedings under section 14G (variation of a banning order) or section 14H (termination of a banning order) and a recipient of a notice under section 21B(2) of the Football Spectators Act 1989.
  - (i) Advice and Assistance and, where appropriate, Advocacy Assistance to an individual apply to vary bail conditions imposed by police under s 47 (1E) of the Police and Criminal Evidence Act 1984, as amended by the Criminal Justice Act 2003.
- 3. A Duty Solicitor shall not under paragraph 8.3.2 above provide Advocacy Assistance in committal proceedings or at a not guilty trial, nor subject to paragraphs 8.3.2 (e) to (g), Advice and Assistance or Advocacy Assistance to a Client in connection with a non-imprisonable offence.
- 4. On any adjourned hearing, a Duty Solicitor shall 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 service in the same case except in connection with defendants coming within paragraph 8.3.2 (b) above.
- 5. A court Duty Solicitor shall not advise or represent any Client at a sitting when that Duty Solicitor or any member of his or her firm is representing the Crown Prosecution Service in the same court building.
- 6. A court Duty Solicitor shall remain at the court 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 shall consult the clerk of the court or other suitable person.
- 7. We may require, for specified Magistrates' Court Local Schemes, that a Solicitor, whilst acting as a Duty Solicitor, may not undertake any cases in connection with which he or she has previously received instructions.
- 8. A court Duty Solicitor shall wear an identification badge during his or her Duty Period at court.
- 9. An application for a Representation Order shall not be made by you (or anyone working under your firm's contract) for any Matter or Case that concludes on the same day as the court Duty Solicitor session where you have acted as court Duty Solicitor on that Matter. Such work shall be claimed at the court Duty Solicitor rates set out in Part E Section 3.4 of this Specification. An exception to this Rule applies where the Matter or Case was not within the scope of service of the court Duty Solicitor scheme.
- 10. A court Duty Solicitor must check that the Matter falls within the scope of service of the court Duty Solicitor scheme before accepting instructions to act. A written record must be made, either before the Advice and Assistance or Advocacy Assistance is provided or, if provided at very short notice, as soon as practicable thereafter. Details recorded should include the Client's name, address, date, time and venue of court appearance, confirmation that the Matter falls within scope and whether the Client is in custody or charged with an imprisonable offence.

# APPENDIX 11 ~~Arrestable,~~ Imprisonable and Non-imprisonable offences

## 1. Non-Imprisonable Offences

Non-imprisonable offences cannot result in an offender, who pleads guilty or is found guilty, receiving a **sentence** of imprisonment.

Such offences do not permit imprisonment as a **sentence** option by virtue of the statute or regulation that created and defines them.

There will be times when suspects or defendants are held in custody for any one of a number of reasons, before the determination of a non-imprisonable case.

**Common examples of such offences are:**

- Disorderly Conduct: Section 5 Public Order Act 1986.
- Speeding: (Road Traffic Regulation Act ss 81 (84 or 86) and 89).
- Driving other than in accordance with a licence: Section 87 Road Traffic Act 1988.
- Driving without a test certificate in force (MOT): Section 47(1) Road Traffic Act 1988.
- Driving without Insurance or causing or permitting the same: Section 143 Road Traffic Act 1988.
- Forging excise licence, driving licence, Insurance certificate, test certificate Section 6 Public Passenger Vehicle Act 1981, on conviction of the offences in the Magistrates Court. If the matters go to the Crown Court then on conviction imprisonment is one of the sentences that are available.
- Ticket touting: Criminal Justice and Public Order Act 1994 s166.
- Taxi touting ('touting for hire'): Criminal Justice and Public Order Act 1994 s167.
- Drunk and disorderly: Criminal Justice Act 1967, s91.

When formulating claims or auditing files for Police Station work Advice and Assistance the impact of Part B Section 8 of the General Criminal Contract must be considered as this restricts the work that the Commission will pay for when dealing with these types of offences.

Part B Section 8 Scope of Duty Solicitor Service:

Paragraph 8.2.17 defines the cases in connection with which the solicitor may provide Police Station Telephone Advice only, and should be read in conjunction with paragraph 8.2.18, which lists the exceptions to the above.

This includes a client who is detained in relation to a non-imprisonable offence.

## 2. Imprisonable Offences

An imprisonable offence is one that **can** result in an offender, who pleads or is found guilty, receiving a sentence of imprisonment.

Whether an individual is imprisoned can depend on one of a number of factors. In some rare cases conviction of the offence alone will mean that imprisonment is the mandatory punishment, e.g. murder.

However, for many other offences imprisonment will be one of a range of possible sentences available to the court depending on a number of other factors. For instance, drink driving can result in a number of possible sentences over and above the mandatory minimum disqualification period of 12 months. Where the offence is the defendant's first and the reading of alcohol is low, then the punishment is usually a fine. However, if for example it is a very high reading (three or four times the legal limit) or is the defendant's third such offence in 10 years then imprisonment is the much more likely punishment.

Common examples of other imprisonable offences are:

- Dangerous Driving: Section 2 Road Traffic Act 1988 (as substituted by the Road Traffic Act 1991).
- Failing to report an accident: Section 170(4) Road Traffic Act 1988 as amended.
- Driving whilst disqualified: Section 103 Road Traffic Act 1988.
- Being drunk in charge of a motor vehicle: Section 4(2) Road Traffic Act 1988.

### **3. Arrestable Offences**

Meaning of arrest:

To be placed under arrest means being subject to restraint of your movements, i.e. once arrested you are no longer free to leave the person who has arrested you.

An arrest can be effected physically by seizing or touching, e.g. by holding or placing handcuffs on the party concerned and or by words, e.g. you are under arrest.

Not all offences automatically enable a police officer to exercise their power of arrest. Only those offences that are defined as "arrestable offences" do.

Section 24 Police and Criminal Evidence Act 1984 contains the definition of which offences are arrestable offences.

The definition states:

1. Offences for which sentence is fixed by law e.g. Murder – sentence is life imprisonment.
2. Offences for which a person of 18 years of age or over (not previously convicted) may be sentenced to imprisonment for a term of five years (or might be sentenced but for the restrictions imposed by Section 33 Magistrates' Courts Act 1980).

Section 33 restricts the maximum sentence that can be imposed in some cases by virtue of the value of the offence e.g. Criminal damage is an offence for which a person of 18 years of age or over (not previously convicted) may be sentenced to imprisonment for a term of five years.

~~However, when the damage concerned is not caused by fire; where no racial aggravation is involved and the value is below £5,000, then the maximum penalty that can be imposed is a fine or six months imprisonment.~~

~~The arrestable nature of the offence is not lost as a result of the reduced power of sentencing.~~

3. ~~Offences listed in Schedule 1A and reproduced at the end of this Appendix.~~

~~A power to arrest also arises under Section 25 Police and Criminal Evidence Act 1984.~~

~~This section enables the police to arrest and detain individuals in connection with non-arrestable offences provided that certain criteria are met. The aim of the section is twofold:~~

~~(a) The first set of criteria enable the police to summons to court offenders for the offences concerned. The power engages when the police are unable to satisfy themselves that the name or address that they have been provided with is correct. If they conclude this, it follows that they could not successfully serve by post a summons on that person. To enable the police to identify, to their satisfaction, the suspect and an address to which a summons could be sent they can arrest and detain them to make the relevant enquiries.~~

~~(b) If the police believe that it is necessary to arrest someone to either protect them or the public (including children and vulnerable persons) from harm, injury, damage to property, the commission of an act of gross indecency or the unlawful obstruction of the highway.~~

~~This section does not create a new arrestable offence, nor does it convert non-arrestable offences into arrestable offences.~~

## ~~Schedule 1A of the Police and Criminal Evidence Act 1984~~

### ~~Specific Offences Which are Arrestable Offences~~

~~An offence for which any person may be arrested under the Customs and Excise Acts (within the meaning of the Customs and Excise Management Act 1979 (c.2))~~

~~Governing Legislation: \_\_\_\_\_ Customs and Excise Acts~~

~~An offence under the Official Secrets Act 1920 (c. 75) which is not an arrestable offence by virtue of the term of imprisonment for which a person may be sentenced in respect of them.~~

~~Governing Legislation: \_\_\_\_\_ Official Secrets Act 1920~~

~~An offence under Section 1(1) of the Prevention of Crime Act 1953 (c.14) (prohibition of carrying weapons without lawful authority or excuse).~~

~~Governing Legislation: \_\_\_\_\_ Prevention of Crime Act 1953~~

~~An offence under-~~

~~(a) Section 22 of the Sexual Offences Act 1956 (c.69) (causing prostitution of women);  
or~~

~~(b) Section 23 of that Act (procurement of a girl under 21).~~

~~Governing Legislation: \_\_\_\_\_ Sexual Offences Act 1956~~

~~An offence under Section 2 of the Obscene Publications Act 1959 (c.66) (publication of obscene matter).~~

~~Governing Legislation: \_\_\_\_\_ Obscene Publications Act 1959~~

~~An offence under-~~

~~(a) Section 12(1) of the Theft Act 1968 (c.60) (taking motor vehicle or other conveyance without authority etc.); or~~

~~(b) Section 25 (1) of that Act (going equipped for stealing etc.)~~

~~Governing Legislation: \_\_\_\_\_ Theft Act 1968~~

~~An offence under Section 3 of the Theft Act 1978 (c.31) (making off without payment).~~

~~Governing Legislation: \_\_\_\_\_ Theft Act 1978~~

~~An offence under Section 1 of the Protection of Children Act 1978 (c.37) (indecent photographs and pseudo photographs of children).~~

~~Governing Legislation: \_\_\_\_\_ Protection of Children Act 1978~~

~~An offence under Section 1(1) or (2) or (6) of the Wildlife and Countryside Act 1981 (c.69) (taking, possessing, selling etc. of wildlife birds) in respect of a bird included in Schedule 1 to that Act or any part of, or anything derived from, such a bird.~~

~~An offence under-~~

~~(a) Section 1(5) of the Wildlife and Countryside Act 1981 (disturbance of wild birds);~~

~~(b) Section 9 or 13(1)(a) or (2) of that Act (taking, possessing, selling etc. of wild animals or plants) or~~

~~(c) Section 14 of that Act (introduction of new species etc.).~~

~~Governing Legislation: \_\_\_\_\_ Wildlife and Countryside Act 1981~~

~~An offence under Section 39(1) of the Civil Aviation Act 1982 (c.16) (trespass on aerodrome).~~

~~Governing Legislation: \_\_\_\_\_ Civil Aviation Act 1982~~

~~An offence under Section 21C(1) or 21D(1) of the Aviation Security Act 1982 (c.36) (unauthorised presence in a restricted zone or on an aircraft).~~

~~Governing Legislation: Aviation Security Act 1982~~

~~An offence under Section 1 of the Sexual Offences Act 1985 (c.44) (kerb-crawling).~~

~~Governing Legislation: Sexual Offences Act 1985~~

~~An offence under Section 19 of the Public Order Act 1986 (c.64) (publishing etc. material likely to stir up religious or racial hatred).~~

~~Governing Legislation: Public Order Act 1986~~

~~An offence under-~~

~~(a) Section 139(1) of the Criminal Justice Act 1988 (c.33) (offence of having an article with a blade or a point in a public place); or~~

~~(b) Section 139A(1) or (2) of that Act (offence of having article with a blade or point or offensive weapon on school premises).~~

~~Governing Legislation: Criminal Justice Act 1988~~

~~An offence under Section 103(1)(b) of the Road Traffic Act 1988 (c.25)(driving while disqualified).~~

~~An offence under subsection (4) of Section 170 of the Road Traffic Act 1988 (failure to stop and report an accident) in respect of an accident to which that section applies by virtue of subsection (1)(a) of that section (accidents causing personal injury).~~

~~Governing Legislation: Road Traffic Act 1988~~

~~An offence under any provision of the Official Secrets Act 1989 (c.6) other than subsection (1), (4) or (5) of Section 8 of that Act.~~

~~Governing Legislation: Official Secrets Act 1989~~

~~An offence under Section 14J or 21C of the Football Spectators Act 1989 (c.37) (failing to comply with requirements imposed by or under a banning order or a notice under section 21B).~~

~~Governing Legislation: Football Spectators Act 1989~~

~~An offence under any provision of the Football (Offences) Act 1991 (c.19).~~

~~Governing Legislation: Football (Offences) Act 1991~~

~~An offence under-~~

~~(a) Section 60A(7) of the Criminal Justice and Public Order Act 1994 (c.33) failing to comply with requirements to remove disguise);~~

~~(b) Section 166 of that Act (sale of tickets by unauthorised persons); or~~

~~(c) Section 167 of that Act (touting for car hire services).~~

~~Governing Legislation: Criminal Justice and Public Order Act 1994~~

~~An offence under Section 89(1) of the Police Act 1996 (c.16) (assaulting a police officer in the execution of his or her duty or a person assisting such an officer).~~

~~Governing Legislation: Police Act 1996~~

~~An offence under Section 2 of the Protection from Harassment Act 1997 (c.40) (harassment).~~

~~Governing Legislation: Protection from Harassment Act 1997~~

~~An offence falling within Section 32(1)(a) of the Crime and Disorder Act 1998 (c.37) (racially or religiously aggravated harassment).~~

~~Governing Legislation: Crime and Disorder Act 1998~~

~~An offence under-~~

- ~~(a) Section 12(4) of the Criminal Justice and Police Act 2001 (c.16) (failure to comply with requirements imposed by constable in relation to consumption of alcohol in public place); or~~
- ~~(b) Section 46 of that Act (placing of advertisements in relation to prostitution).~~

~~Governing Legislation: Criminal Justice and Police Act 2001~~

~~An offence under Section 36 of the Criminal Justice Act 1925 (untrue statement for procuring a passport).~~

~~Governing Legislation: Criminal Justice Act 1925.~~

~~An offence under Section 5(2) of the Misuse of Drugs Act 1971 (having possession of a controlled drug) in respect of cannabis or cannabis resin (within the meaning of that Act).~~

~~Governing Legislation: Misuse of Drugs Act 1971~~

~~17A An offence under Section 174 of the Road Traffic Act 1988 (false statements and withholding material information).~~

~~Governing Legislation: Road Traffic Act 1988~~

## **APPENDIX 12 Contract Specification Part B Section 9**

### **9. The CDS Direct Pilot**

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

1. Under the CDS Direct Pilot some Police Station Telephone Advice for Clients at the Police Station will be provided centrally rather than by the Duty Solicitor.
2. CDS Direct Pilot Telephone Advisers will provide Police Station Telephone Advice to the conclusion of the case in respect of all Police Station Telephone Advice only cases (as set out in Part B, paragraphs 8.2.17(a) to (d)) unless one of the exceptions set out in paragraphs 8.2.18(a) to (e) applies or there are other reasons identified by the CDS Direct Pilot Telephone Adviser which mean that telephone advice or attendance by a Duty Solicitor is necessary.
3. In addition, in Specified Regional CDS Direct Pilot Schemes, CDS Direct Pilot Telephone Advisers will provide telephone advice for all non indictable only offences up to the time when a Duty Solicitor is required to attend the Police Station. A Duty Solicitor may be asked to provide Police Station Telephone Advice in these Schemes instead of CDS Direct, even though the offence is non indictable only, if there are special reasons why the case should be handled by a Duty Solicitor rather than a CDS Direct Pilot Telephone Adviser (such as the CDS Direct Pilot Telephone Adviser having a conflict of interest) (a “Special Request”).
4. Where a Former CDS Direct Pilot Case is referred to a Duty Solicitor for Police Station Attendance, you may claim one Fixed Acceptance Fee. The Fixed Acceptance Fee is paid in respect of any and all telephone calls you may undertake on the Former CDS Direct Pilot Case in the Investigations Class, and is payable irrespective of the number or nature of calls made. The Fixed Acceptance Fee is claimable even if you do not make any telephone calls.
5. You must not claim (and we will not pay) for any Police Station Telephone Advice to clients in the Investigations Class in respect of cases where CDS Direct has given telephone advice. This does not preclude claiming the Fixed Acceptance Fee referred to above.
6. As soon as CDS Direct refer a case to a Duty Solicitor to attend at the Police Station, the case ceases to be a CDS Direct Pilot Case and the normal service requirements in Sub Section 8.2 apply, with the exception of the obligation to provide initial telephone advice under paragraph 8.2.6 (a).
7. Where a Duty Solicitor is asked to attend on a case which has been handled by CDS Direct, the Duty Solicitor may ask an Accredited Representative to conduct the first attendance.

#### ***General Provisions and Definitions***

8. The “CDS Direct Pilot” will end on four weeks’ written notice by us.
9. The “CDS Direct Pilot” is the pilot in which the Call Centre Service refers certain requests for Police Station Advice and Assistance (“CDS Direct Pilot Cases”) to a CDS Direct Pilot Telephone Adviser (instead of to the Duty Solicitor).

10. During the CDS Direct Pilot:
  - (a) all CDS Direct Pilot Cases are excluded from the scope and service obligations of Part B Section 8; and
  - (b) you are not entitled to (and must not claim) any payment for any work in the Investigations Class of Work in respect of CDS Direct Pilot Cases; and
  - (c) in respect of cases excluded from the definition of CDS Direct Pilot Cases under paragraph 11(b)(iii) below you are not entitled to (and must not claim) any payment for any telephone calls in the Investigations Class of Work. This does not preclude you claiming a Fixed Acceptance Fee if entitled to do so under (d) below.
  - (d) If a Former CDS Direct Pilot Case is referred to a Duty Solicitor for Police Station Attendance, you are entitled to claim one Fixed Acceptance Fee for that Case. The Fixed Acceptance Fee is paid in respect of any and all telephone calls you may undertake on the Former CDS Direct Pilot Case in the Investigations Class, and is payable irrespective of the number or nature of calls made. The Fixed Acceptance Fee is payable even if you do not make any telephone calls. If, after a Former CDS Direct Pilot Case is referred to you for Police Station Attendance, you are notified that attendance is not necessary (for example, because an interview has been cancelled) you are still entitled to claim the Fixed Acceptance Fee. The level of the Fixed Acceptance Fee is set out in Part E of this Specification.
11. “CDS Direct Pilot Cases” are:
  - (a) all requests for Police Station Advice and Assistance by a Duty Solicitor within the scope of Part B, paragraphs 8.2.17(a) to (d) of the Specification (i.e. Police Station Telephone Advice only cases) except where the request is a Special Request or relates to an indictable only offence; and
  - (b) in the Specified Regional CDS Direct Pilot Schemes only, all requests for Police Station Advice and Assistance by a Duty Solicitor except where:
    - (i) the request is made in relation to an indictable only offence; or
    - (ii) at the time the request is made, a time has been arranged for the Client to be interviewed by the Police; or
    - (iii) telephone advice has been given by a CDS Direct Pilot Telephone Adviser in response to a request and the point has been reached at which a Duty Solicitor is now required to attend; or
    - (iv) the request is a Special Request.
12. “Fixed Acceptance Fee” is the fee which Duty Solicitors are entitled to claim under Paragraph 10 (d) above.
13. “Former CDS Direct Pilot Case(s)” are cases which have been CDS Direct Pilot Cases but which no longer meet the definition of a CDS Direct Pilot Case.

14. The “Specified Regional CDS Direct Pilot Schemes” are such local Duty Solicitor Schemes that we notify to you in writing. As at the start of the CDS Direct Pilot, these are:

Bootle & Crosby  
Knowsley  
Liverpool  
Southport  
St Helens  
Wirral  
Boston  
Spalding

15. “Special Request” is a request identified to you as such by the Call Centre Service. For example (without limitation) Special Requests may include requests where the Call Centre Service considers that, because of a conflict of interest or other good reason, the request should be handled by the Duty Solicitor (instead of by a CDS Direct Pilot Telephone Adviser) or considers that Advocacy Assistance is required, or considers that one of the criteria in Part B, paragraph 8.2.18 (i.e. exceptions to Police Station Telephone Advice only cases) applies.
16. “CDS Direct Pilot Telephone Adviser” means a person approved by us to be employed or engaged specifically to provide telephone advice for the purposes of the CDS Direct Pilot, the minimum qualification for whom shall be the Law Society’s Police Station Qualification.